Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

Nos. 79-1252 and 79-1502

Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF CALIFORNIA *et al.*,
Petitioners,

v.

SIERRA CLUB *et al.*,
Respondents.

KERN COUNTY WATER AGENCY, *et al.*,
Petitioners,

v.

SIERRA CLUB *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI IN NO. 79-1252 FILED FEBRUARY 13, 1980.
PETITION FOR CERTIORARI IN NO. 79-1502 FILED MARCH 17, 1980.
CERTIORARI GRANTED OCTOBER 6, 1980.

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DOCKET ENTRIES (District Court)

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB
Plaintiffs

vs.

ROGERS C. B. MORTON
Defendants

No. C-75-500 SAW (13)

Filing or Order Date		Proceedings	Date Order or Judgment Noted
1971			
Mar. 16	1.	Filed complaint, no process	
Mar 17		Issued Summons	
Apr. 7	2.	Filed summons ret. ex.	
	3.	Filed No. Mo. & Mo. for ext time to ans comp. by STATE of CALIF. Hrg.5/20 2:15	
May 0		ORD; deft mo to ext time for ans GRTD. SAW	
	4.	Filed Stip & Ord. ext time for USA to ans thru 6/20	SAW
	5.	Filed ORD. ext time thru 6/20 for St. Calif. to ans SAW	
May 24	6.	Filed proof of ser of Ord. ext time to 6/20	
June 3	7.	Filed pltfs Sierra first request for production of documents by Fed defts	
	8.	Filed pltfs Sierra first request for production of documents by State defts	
June 21	9.	Filed notice of Mo. & Mo. to dismiss, set for August 5, 1971 at 2:15P.M.	
June 21	10.	Filed notice * Motion to dismiss complaint set for August 5, 1971 at 2:15P.M. $	
July 7	11.	Filed STATE OF CALIF. objections to pltf's 1st req. for documents	
July 8	12.	Filed USA ans. and objections to pltf. 1st req for documents	
July 9	13.	Filed deft. supplementary ans. & objections to pltf. 1st req. for documents	
July 23	14.	Filed Stip. & Ord. Con motion to dismiss to Sept. 2, 1971 at 2:15 P.M. SAW	
Aug 6	15.	Filed No. of Mo. and Mo. to compel prod of docums hrg 9/2 2:15	

Filing or Order Date		Proceedings	Date Order or Judgment Noted
1971			
Aug 16	16.	Filed Memo. in opposition to Pltffs Mo to compel Prod. of Doc.	
Aug 25	17.	Filed Notice of re-setting hrg. to 9/9/71	SAW
Sept 1	18.	Filed deft Memo. in opp. to, Mo. to compel prod of docums.	
Sept 7	19.	Filed Stip & Ord. cont hrg on mos to 9/23 2:15	SAW
Sept 23	20.	Filed Stip. cont hrg on Mos to 10:21 2:15	SAW
Oct 12	21.	Filed pltf. brief in opp to deft Mo. to dism	
	22.	Filed pltf. memo. in opp to deft Mo. to dism & suppl. memo. in sup of Mo. for prelim. inj.	
Oct 21		Ord after hrg. Deft Mo to dismiss complaint as to United States & State Defts Denied without prejudice, Pltff Sierra Club Mo to compel production referred to Magistrate Woodruff for Hrg.	SAW
Nov 5	23.	Filed sub of attys. for pltf SIERRA CLUB. Gerald K. Gleason for R. Frederic Fisher	
Nov 16	24.	Filed pltf. No. of Mo. to compel prod of docums hrg 12/3 10:00	
Nov 19	25.	Filed St. of Calif. interrogs to SIERRA CLUB	
Nov 19	26.	Filed 1st set of interrogs of State of Calif to Pltff Friends of the	
Dec 10	27.	Filed ans of USA defts.	
Dec 16	28.	Filed ans of pltf SIERRA CLUB to interrogs of ST. of Calif.	
Dec 23	29.	Filed amendment to ans of USA	
1972			
Jan 5	30.	Filed 2d amendment to USA ans.	
Jan 10	31.	Filed ans to comp by State defts.	
Feb 3		Case assigned to Judge Renfrew	
Feb 4	32.	Filed Findings of facts & conclusions of law re prod of documents	
Feb 24	33.	Filed State defts' not. pursuant to Ord to Produce	
Feb 28	34.	Filed pltf's substn of attys	
Mar 31	36.	Filed State of Calif. Defts' first interrogs to Pltffs.	
	36.	Filed State of Calif Defts' First interrogs to Pltfs.	
	37.	Filed State of Calif. Defts' First interrogs to Pltifs.	
	38.	Filed State of Calif Deft's first interrogs to Pltfs.	
Apr 5	39.	Filed State of Calif. Defts' 1st interrogs to Pltfs.	
Apr 26	40.	Filed Stip that plfts may have to May 30 1972 to answer interrogs.	
Jun 1	41.	Filed Plfs Hank Schramm answers to interrogs.	
	42.	Filed Pltf Sierra Club Answers to Interrogs.	
Aug 10	43.	Filed Reporter's transcript, Oct 21. 1979.	
Oct 12	44.	Filed Answers to interrogs.	
Oct 31	45.	Filed Pltfs' first interrogs to state of Calif Defts.	
	46.	Filed Plitfs first interrogs to Federal Defts.	
Dec 6	47.	Filed Stip for ext of time to Jan 5, 1973 to ans pfts 1st interrogs.	
Dec 19	48.	Filed Stip & ord that Deft State of Calif. Norman B. Livermore Jr. may have to Jan 1, 1973 to ans Pltfs' 1st interrogs.	

Filing or Order Date		Proceedings	Date Order or Judgment Noted
1973			
Mar 22	49.	Filed Answer to Plifs first interrogs to Federal Defts.	
Apr 11	50.	Filed pltfs no of mo to compel ans to interr along with memo of pts & auth & affts	
Apr 17	51.	Filed defts ans to pltfs 1st interr	
Apr 26	52.	Filed deft ans to pltfs 1st set of interr (State defts)	
Sept 20	53.	Filed notification of change of address & firm name	
Oct 3	54.	Filed Clerk's notice of Status report set for Oct 17-73 at 9:00a.m.	
Oct 9	55.	Filed Status report.	
Oct 9	56.	Filed Status report. Certificate of counsel.	
Oct 9	57.	Filed Certificate of Counsel by attorneys for Sierra Club this document forwarded to Hon	CBR
Oct 17		Ord. Status report; prelim pre-trial conf set for 1-9-74 at 9:00am; set for 5 days trial by court on 6-3-74 at (9:00am)	
Nov 16	58.	Filed Pltf's second Req. for prod. of Doc.	
Dec 12	59.	Filed Deft's resp. to Pltf's sec. set of req. for prod of docs.	
Dec 20	60.	Filed Deft's not. of mo and mo for Order upon failure to make disc. to be heard 1-9-74/9:30am	
	61.	Filed Dept's not of mo and mo to dismiss complaint to be heard 1-9-74/9:30am	
Dec 21	62.	Filed ORD shortening time; that Fed. deft's may have until 12-31-73 within which to file their not. of mo and mo to dismiss the complaint and the first amended complaint, which the parties have stip. may be filed herein, said mos to be heard on 1-9-74.	CBR
	63.	Filed Deft's not. of mo and mo to dismiss complaint and first amended complaint.	
	64.	Filed Deft's Interrogs to Pltf.	
Dec 27	65.	Filed Stip & ORD; that pltf's proposed First amended Complaint may be filed without formality of a mo.	CBR
	66.	*Filed First Amended Complaint* for Declaratory and Infunctive relief.	
1974			
Jan 3	67.	Filed Not. to counsel of hrg date of 1-10-74/9am	
Jan 10	68.	Filed Stip & ORD; that the date set for hrg of mos in this case may be rescheduled to 2-13-74/9am	CBR
Feb 1	69.	Filed Fed. Deft's supp'l memo of pts and author. in supp. of mo dismiss.	
	70.	Filed Pltf's memo in opp. to mo of Fed deft's to dismiss the first amended complaint.	
	71.	Filed Pltf's memo in opp. to State Deft's mo to dism.	
	72.	Filed Pltf's ans to interrogs of fed defts.	
	73.	Filed pltf's supp'l affidavit in opp. to mos to dismiss.	
Feb 12	74.	Filed Pltf's Joinder and adoption of Supp'l opp' ot defts mo to dismiss.	
Feb 13	75.	Filed Correction of fed. defts' resp. to pltf's sec set of reqs for prod. of docs.	

Filing or Order Date		Proceedings	Date Order or Judgment Noted
1974			
Feb 13		ORD Fed. defts mo to dismiss complaint and 1st amended complaint & State defts mo to dismiss complaint—Both Denied; cont'd to 2-22-74/4:30pm for pretrial;	CBR
March 12	6.	Filed ORD; that Magist Woodruff is hereby ordered and directed to: Assist in the conduct of P/T and idsc. Proc.; Assist the parties in the preparation of a P/T ORD; etc See ORD for more details;	CBR
March 14	77.	Filed NOt. that the matter was referred to Magist Court and is calendared for hrg on 3-21-74/2pm	WOODRUFF
March 15	78.	Filed Kern County Water Agency's not. of mo to intervene as Deft. to be heard 4-10-74/9am	
March 21		ORD; First conf. on proceures to be followed.; Parties ordered to prepare porposedlist of undisputed facts. Next hrg for late Apr. on date to be set by parties.	WOODRUFF
March 29	79.	Filed not. of mo to intervene as deft by The Metro. Water District of Southern Calif. to be heard 4-10-74.	
	80.	Filed Ex Parte Mo to shortentime by Metropolitan Water District	
	81.	Filed ORD shortening not. of hrg on mo to intervene to 4-10-74 at 9am	CBR
	82.	Filed Pltfs memo in opp. to mo to intervene	
April 1	83.	Filed defts Statement of no opp. to mo to intervene (Fed. defts)	
April 8	84.	Filed Not. of mo of Santa Clara Valley Water District to Intervene as Deft to be heard 4-10-74	
	LOD	GED:ANS TO FIRST AMENDED COMPLAINT BY SANTA CLARA VALLEY WATER DISTRICT.	
	85.	Filed Ex Parte mo of Santa Clara Valley Water Dist. & ORD; that that the time of not. for the hrg on the mo to intervene as deft is shortened to permit hrg of said mo 4-10-74/am	CBR
	86.	Filed Proof of service by State of Calif.	
April 9	87.	Filed Memo of Pltfs Sierra Club and Hank Schramm in opp. to mo to Intervene.	
April 10		ORD Kern County Water District's mo to intervene & Metro. Water District of Southern Cal. mo to Intervene and Santa Clara Water District mo to intervene--Granted	CBR
April 12	88.	Filed Tulare Lade Basin Water Storage District's not. of mo & MO to intervene as deft with attached documents to be heard 5-1-74/9am	
April 16	89.	Filed Tulare Lake Basin Water Storage's Ex Parte mo to shorten time with attached cert. of counsel in supp. of mo.	
April 17	90.	Filed Tulare Lake Basin Water's Declaration of Service by Mail	
April 18	91.	Filed ORD shortening not. of hrg on mo to intervene to 4-24-74/9am	
April 24		ORD Tulare Lake Basin Water Storage Dist. mo to Intervene—Granted;	CBR
April 25	92.	Filed Pltfs memo in opp. to mo to intervene	
April 29	93.	Filed Stip and ORD; that the mo of Tulare Lake Basin Water Storage District to intervene as deft is GRANTED;	CBR

Filing or Order Date		Proceedings	Date Order or Judgment Noted
1974			
April 30	94.	Filed Fed. Defts' Third set of Interrogs to pltfs:	
May 2	95.	Filed Stip & ORD;that the mos of the Kern County Water Agency, The Mo Water Dist., and the Santa Clara Valley Water Dist. to intervene as defts in this action are GRANTED, and they are made parties deft action and the ans of said intervenors attached to their mos shall stand as their ans to the first amended complaint.	CBR
May 7	96.	Filed defts not. of mo & mo for P/T conf to be heard 5-17-74/2pm	
May 8	97.	Filed OrD;that defts' not. of mo and mo for p/t conf. may be seved on pltfs five days before the date not'd for said P/T conf.	WOODRUFF
May 17	98.	Filed ANS TO FIRST AMENDED COMPLAINT BY INTERVENOR.	
		ORD; matter not. by defts for an interim p/T conf with an agenda attached Under the first agenda item the parties all agreed that the P/T ord cannot be completed until the court ruled on a defts' mo to dismiss as to certain parties and causes of action presently pending; there was agreement that the trial should be bifurcated and language proposed for inclusion in the p/T ord spelling out the bifurcation.; cont'd until 5-31-74/10am for possible completion of first draft of the final P/T ord.	WOODRUFF
May 29	99.	Filed Pltf William Dixon's ans to defts' first interrogs.	
May 30	100.	Filed Pltfs FRIENDS of the Earth Substitution of Attorneys; John B. Clark in place of Gary J. Near	
	101.	Filed Plts' ans to Fed. defts' Third set of interrogs	
June 6	102.	Filed Fed. defts supp. to ans to pltfs' first interrogs.	
June 7		Ord; Magistrate ruled on a series of Mo and objections; pltf to prepare final P/T ord for signature and approval at 8:00 AM 6-10-74; Trial to begin 9:00AM 6-10-74	WOODRUFF
June 10	103.	Filed Agreed P/T ord respecting the first phase of Bifurcated Trial	CBR
		ORD court Trial; Evidence introduced; cont'd to 6-11-74/1:30pm for further trial	CBR
June 11		ORD; further trial; evidence introduced; Fed. defts' mo for a judgt in favor of Fed. defts on all counts or in the alternative for a mo to dismiss with prej. cont'd to 6-12-74	CBR
	104.	Filed ANS OF STATE DEFTS TO FIRST AMENDED COMPLAINT	
June 12		ORD; further trial; Fed. defts mo for a judgt in favor of Fed. defts on all counts or in the Alternative mo to dismiss with prej Denied w/o prej.; State defts mo to dismiss with respect to delta pumping Pland—Denied w/o prej.; cont'd to 6-17-74/1:30pm	CBR
June 17		ORD; further trial; Evidence introduced; cont'd to 6-18-74/1:30pm	CBR
June 18		ORD; further trial; evidence introduced; Fed. defts mo to admit Fed deft exhibits 14a, 14c, 14d deferred; Pltfs' mo to strike portions of witness Teerink's testimony—Granted; cont'd to 6-19-74/10am	CBR
June 19		ORD further trial; evidence introduced; cont'd to 6-20-74/9am	CBR
June 20		ORD; further trial; Evidence introduced; cont'd to 6-21-74/9am	CBR

Filing or Order Date		Proceedings	Date Order or Judgment Noted
1974			
June 21		ORD; further trial; all briefs to be submitted by 7-19-74; cont'd to 7-26-74/1:30pm for final arguments on the first phase of the bifurcated trial	CBR
July 2	105.	Filed ORD; oral arguments of the parties to be heard 7-26-74/1:30pm	CBR
July 12	106.	Filed Fed. defts proposed findings of fact and conclusions of law.	
	107.	Filed State Defts' Proposed Findings of fact and conclusions of law.	
	108.	Filed Proposed Findings of Fact and Conclusions of Law of Pltfs'	
July 15		LODGED: INTERVENOR KERN COUNTY WATER AGENCY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.	
July 17	109.	Filed Erratum in Proposed Findings of Fact and Conclusion of Law of Pltfs Sierra Club, Friends of the Earth and Hank Schramm.	
July 18	110.	Filed ORD; that State defts' Exhibit 3 be admitted into evidence; and that a cert. copy of a letter of 3-28-66 to Chief of Engineers' Depart of Army, etc be admitted into evidence as State defts' exhibit next in ord.	CBR
July 19		LODGED: FED. DEFTS'S POST TRIAL BRIEF AND OBJECTIONS TO PETFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF	LAW
	111.	Filed Joint Brief of Intervenors.	
	112.	Filed Pltfs' Post-Trial memo	
	113.	Filed State Defts' Brief.	
July 22	114.	Filed Pltf's objections to defts' proposed findings of Fact and Conclusions of law.	
July 24	115.	Filed Pltf William Dixon's Joinder and adoption of proposed finding of fact and conclusions of law and post trial memo	
July 26		Ord; Further tr resumed. Witnesses. Case submitted. Cont'd to 9-27-74 @ 4:30.	CBR
Aug. 20	116.	Filed Pltfs' third req for prod. of docs by Fed. Defts.	
	117.	Filed Pltf's third req for prod. of docs by State Defts.	
Aug. 30	118.	Filed Fed. defts' memo re comments of Court Made of 7-26-74	
Sept. 3	119.	Filed State Defts' memo concerning issues Discussed in oral argument.	
Sept. 5	120.	Filed Intervenors' Memo on Oral Argument.	
Sept. 20	121.	Filed pltf's Status Report.	
	122.	Filed State Defts' memo concerning phase two of the trl	
Oct. 7	123.	Filed state defts' resp. and objections to pltfs' third req for prod. of docs.	
	124.	Filed Fed. defts' objects to pltfs' 3rd req for prod. of docs	
1975			
Feb. 4	125.	Filed Reporter's Transcript of 7-26-74	
July 28	126.	Filed Memo of Opinion	CBR
Sept. 4		ORD: hrg cont to 10-2-75/1:30 pm	CBR
Oct.	127.	Clerk's notice resetting hearing on 11-6-75/2pm to 11-4-75/2pm	CBR

Filing or Order Date		Proceedings	Date Order or Judgment Noted
1975			
Nov. 2	128.	Stipulation & ORDER continuing hearing on 11-4-75 to 12-4-75. at 2pm	CBR
Nov. 26	129.	Federal defendants' Brief in support of their request to enter final judgment	
Dec. 3	130.	Plaintiffs' Memo in opposition to entry of Final Judgment	
Dec. 4	131.	MINUTE ORDER OF 12-4-75: after hearing, continued to 12-19-75/1:30pm for hearing, deemed submitted on 12-19-75 (CBR)	
	132.	Plaintiffs' Memo in opposition to entry of Final Judgment	
Nov. 26		Notice of related case C-75-2508 SW (in C-75-2508 SW)	
Dec. 16	133.	Cases determined not to be related.	
Dec. 18	134.	INTERLOCUTORY ORDER GRANTING INJUNCTIVE RELIEF: plaintiffs' 2nd, 3rd & fifth claims are dismissed with prejudice (CBR) Pending compliance with this Order, Court retains jurisdiction to entertain proceedings in Phase Two of bifucated trial & to make further orders	
Feb 6	135.	Defendants' Livermore & Teerink's Notice of Appeal from Order of 12-18-75	
	136.	Defendant in intervention Kern County Water Agency's Notice of Appeal from Order of 12-18-75	
	13.	Certificate of Clerk to deposit of $250 in lieu of Costs Bond by defendant Kern County	
Feb 1	138.	Designation of Record on Appeal by Appellant Kern County	
	139.	Designation of Record on Appeal by Appellant State	
	140.	Intervenor Metropolitan Water District's Notice of Appeal (Order 12-18-75)	
	141.	$250 Bond on Appeal secured By cash deposit	
	142.	Federal Defendants' Notice of Appeal from Order of 12-18-75	
	143.	Intervenor Tulare Lake's Notice of Appeal from Order of 12-18-75	
	144.	Intervenor Tulare Lake's $250 Personal Bond on Appeal	
17	145.	Intervenor Santa Clara's Notice of Appeal from Order of 12-18-75	
	146.	Intervenor Santa Clara's $250 Personal Bond on Appeal	
Mar. 4	147.	Defendant METROPOLITAN WATER, designation of record on appeal.	
Mar. 5	148.	Appellee's designation of record on appeal.	
Mar 15	149.	Appellant Santa Clara's Designation of record on appeal	
Mar 25		Notice of reproduction costs mailed, $583.50 (each appellant to pay $97.25)	
Mar 29		Received payment for reproduction from Santa Clara Valley	
Mar 26	150.	Appellant Kern County's & State's motion to extend time to transmit record on appeal & ORDER time extended to 5-6-76 (CBR)	
Mar 30		Received payment for reproduction from Kern County	
Mar 31		Received payment for reproduction from State defendants	
Mar 31		Received payment for reproduction from Tulare Lake Basin	
Apr 8		Received payment for reproduction from Metropolitan Water	
Apr 9	151.	Reporter's Transcript of 10-21-71 & 6-26-74, Vol. A, Original &1 copy	

Filing or Order Date	Proceedings	Date Order or Judgment Noted
1975		
	152. Reporter's Transcript of 6-10-74, Vol. I, original & 1 copy	
	153. Reporter's Transcript of 6-11-74, Vol. II, original & 1 copy	
	154. Reporter's Transcript of 6-12-74, Vol. III, original & 1 copy	
	155. Reporter's Transcript of 6-17-74, Vol. IV, original & 1 copy	
	156. Reporter's Transcript of 6-18-74, Vol. V, original & 1 copy	
	157. Reporter's Transcript of 6-19-74, Vol. VI, original & 1 copy	
	158. Reporter's Transcript of 6-20-74, Vol. VII, original & 1 copy	
	159. Reporter's Transcript of 6-21-74 & 9-4-75, original & 1 copy	
May 24	**[certification omitted]**	

DOCKET ENTRIES (Court of Appeals)

United States Court of Appeals

FOR THE NINTH CIRCUIT

SIERRA CLUB, a non-profit California Corporation, *et. al.*, *Plaintiffs-Appellees*	
VS.	Nos. 76-1494;
NORMAN B. LIVERMORE, JR. and JOHN R. TEERINK, *Defendants-Appellants*	76-1534; 76-1651; 76-1663;
KERN COUNTY WATER AGENCY, *et. al.*, *Defendants-In Intervention*	76-1981

For Appellees:
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and ROBERT THUM, ESQ.

For Appellants:
EVELLE J. YOUNGER,
Atty. Gen. Calif.
CARL BORONKAY,
Assis. Atty.
BERTRAM G. BUZZINI,
Dep. Atty. Gen.

Date	Same record for 76-1494, 76-1534, 76-1651, 76-1663, 76-1981 Filings-Proceedings	Clerk's Fee Appellant	Clerk's Fee Appellee
1976			
March 9	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL —chs—	50.00	
Apr 1	Recvd copy of order filed in Dist. Ct. 3/26/76 granting an ext to time to & including May 6, 1976 for transmitting the record —jc—		
May 3	FILED IN 76-1464 TRANSC RECORD ON APPEAL IN FOURTEEN VOLUMES: VOLS. I-V, PLDGS, ONE CERT COPY & TWO COPIES EACH; VOLS. VI-XIV, RPTRS TRANSC, ONE ORIG. & ONE COPY EACH. ONE BOX IN RM. 210 —cjb—		
	Aplts' brief in 76-1464, due June 19, 1976 —cjb—		

Date	Same record for 76-1494, 76-1534, 76-1651, 76-1663, 76-1981 Filings-Proceedings	Clerk's Fee Appellant	Clerk's Fee Appellee
Jun 18	Filed 25 Aplts' Briefs (Livermoore & Teerink) 6/17/76 —dmf—		
June 21	Filed, in 76-1981, federal aplts' motion for permission to file typewritten copy of brief pending reproduction to (c) with copy of brief —jr—		
June 21	Filed Intervenor-aplt's (Kern County, Tulare Basin Water, Storage, Metropolitan Water Dist of So. Calif. & Santa Clara Valley Water Dist.) motion requesting judicial notice; & memorandum of points & authorities in support of motion. (6/21/76) (to Schickele) —jc—		
June 21	Filed in 76-1494, intervenor-aplts' (Kern County Water Agency, Metro. Water Dist. of S. Calif., Tulare Lake Basin Water Storage Dist. & Santa Clara Valley Water District) motion to consolidate appeals 76-1494, 76-1534, 76-1651 & 76-1663 (to "C") —cjb—		
June 22	Rec'd, in 76-1494, 25 Joint Intervenors-Aplts' Briefs (6/21/76) —dmf—		
June 29	Filed, in 76-1981, order (C) granting federal aplts leave to file typewritten copy of brief pending reproduction —dmf—		
Jun 29	Filed, in 76-1494, order (C) consolidating 76-1494, 76-1534, 76-1651 and 76-1663 for purposes of briefing and argument. Subject to reconsideration if any objection filed within 7 days —dmf—		
Jun 29	Filed, in 76-1494, 25 Intervenors-Aplts' Briefs (6/21/76) —dmf—		
Jun 29	Filed, in 76-1494, one typewritten Federal Aplts' Brief —dmf—		
July 6	Filed Appellees Memorandum (Sierra Club, et al) in opposition to Motion requesting judicial notice. 7/2 to Schickele —ec—		
Jul 7	Rec'd, in 76-1981 as of July 2, 1976, 25 Federal Aplts' Briefs; (6/24/76) cover incorrect —dmf—		
Jul 12	Filed Reply Memorandum of Intervenor-Appellants (Metropolitan Water District of So. Calif., et al) in support of motion requesting judicial notice. to Schickele —ec—		
Jul 19	Filed motion & order (Clk) granting aples motion for ext of time. Aples Sierra Club, Friends of the Earth, H. Schramm & W. Dixon may have to Aug. 20, 1976, in which to file briefs. Subj to reconsideration if any obj filed w/in 7 days —ec—		
Jul 21	Rec'd supplemental affidavit in support of motion for ext of time for filing aples' briefs. (Motion already acted upon) —cjb—		
Jul 22	Filed, in 76-1981, 25 Aplts' Briefs (6/24/76) —dmf—		
Aug 17	Filed motion & order (C.D. Clk) extending aples' time (Dixon, et al) for filing brief to Sept 20, 1976. Subj to reconsideration if any obj filed w/in 7 days. —ec—		
Aug 30	Filed order (H & G) Upon due consideration, the motion of Intervenor-aplt's (Kern County, Tulare Basin Water, Storage, etc.,) requesting judicial notice is denied. —fn—		
Sep 20	Filed 25 Aplees' Briefs (Dixon, et al) 9/20/76 —dmf—		

Same record for 76-1494, 76-1534, 76-1651, 76-1663, 76-1981

Date	Filings-Proceedings	Clerk's Fee Appellant	Clerk's Fee Appellee
Oct 7	Filed motion & order (Clk) granting ext of time for filing aplts' closing briefs to Nov 20, 1976. Subj to reconsideration if any obj filed w/in 7 days. (aplts Livermore, et al) —wx—		
Oct 8	Filed in 76-1981, aplt's (USA) motion for permission to file typewritten copy of brief pending repro. Schickele —ec—		
October 19	Filed Aples' (Sierra Club, et al) motion for leave to file errata to brief of Plaintiffs-Aples filed 9/20/76. Schickele —pb—		
Oct 19	Filed order (A) Upon due consideration, the motion of (USA) for permission to file a typewritten copy of the brief pending reproduction is granted. —fn—		
Oct 28	Filed, 76-1981, 25 Aplts' Reply Briefs (USA) 10/15/76 —dmf—		
Nov 3	Filed order (H) upon due consideration, the aple's motion for leave to file errata to their brief is granted —fn—		
Nov 19	Filed 25 Aplts' Reply Briefs (Livermore, et al) 11/18/76 —dmf—		
Nov 22	Filed 25 Intervenor-Aplts' Reply Briefs (Kern County Water Agency, et al) 11/22/76 —dmf—		
1978			
Apr 12	Filed in 76-1981, as of April 3, motion (Sec. of the Interior) SF to accelerate oral argument. (panel) 3/39/78 —dmf—		
May 9	Argued & submitted to Ely, Trask, Tang, CJJ —ec—		
Jul 24	Recvd as of 7/21, from Michael R. Sherwood, Esq., letter dtd. 7/19/78, re add'l citation. (panel) —ec—		
Jul 31	Recvd in 76-1494, from Victor E. Gleason, Esq., letter dated Jul 28, 1978, re Supreme Court's decision in California v. U.S. (panel) —ec—		
Nov 30	As of 11/22/78, Aple's add'l citations. (panel) —vt—		
1979			
Oct. 31	ORDERED OPINION (ELY) TANG CONCURRING FILED & JUDG TO BE FILED & ENTD.		
Oct. 31	Filed opinion—Affirmed in part, reversed in part, and remanded for further proceedings		
Oct. 31	Filed & Entered Judgment. —rmc—		
Nov. 19	Filed, as of Nov. 14, motion & order (clrk) granting aples' (SIERRA CLUB, et al) an ext. of time to and including Nov. 21, 1979 to file petition for rehearing and suggestion for rehearing en banc. —db—		
Nov. 23	Filed as of Nov. 21, aples' (SIERRA CLUB, et al) petition for rehearing and suggestion for rehearing en banc. (panel, active judges) 11/21 —db—		
1980			
Jan. 9	Rec'd as of Jan. 8, ltr dtd Jan. 7, from George Deukmejian's office re: requesting Court to act upon petition for rehearing. (panel) —db—		

Date	Same record for 76-1494, 76-1534, 76-1651, 76-1663, 76-1981 Filings-Proceedings	Clerk's Fee Appellant	 Appellee
Jan. 17	Filed order (E, T & Tg) the petition for Rehearing is DENIED, and the suggestion for a rehearing en banc is REJECTED. —rmc—		
	Mandate Issued		
Feb. 15	Filed, as of Feb. 13, aplt's (STATE OF CALIF) motion to recall and stay mandate. (panel) 2/13 —db—		
Feb. 19	Received SC notice of filing petition for cert on 2/13/80, (California) SC#79-1252. —pn—		
Feb. 25	Filed order (WE) the mandate issued to the DC herein on Jan. 28, 1980 is recalled and stayed pending determination by the Supreme Ct of the application for a writ of certiorari filed by the State of CA. —rmc—		
Apr. 3	Received SC notice of filing petition for cert (Kern County Water) on 3/27/80 SC#79-1502. —pn—		
Oct. 14	Filed certified copy of SC order granting certiorari on 10/6/80, SC#79-1252 & 1502. (copies to panel) —pn—		

AMENDED COMPLAINT

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

[Case caption omitted]

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs allege the following:

Jurisdiction

1. This action arises under the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 400 et seq.; the National Environmental Policy Act of 1969, 83 Stat. 852, the Fish and Wildlife

Coordination Act, as amended, 16 U.S.C. §§ 661-666; the National Estuarine Areas Act, 16 U.S.C. §§ 1221 et seq.; and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1151 et seq.; Jurisdiction of this Court is conferred by the Federal Question Statute, 28 U.S.C. § 1331(a), the 1962 Mandamus Act, 28 U.S.C. § 1361, the Declaratory Judgments Act, 28 U.S.C. § 2201, and Section 10 of the Administrative Procedure Act, 5 U.S.C. 701-706. The matter in controversy exceeds $10,000.00 exclusive of interest and costs. As to the state claim asserted herein, the court has pendant jurisdiction thereof.

Parties

2. Plaintiff SIERRA CLUB is a non-profit California corporation and from 1892 to the present has maintained its principal office in San Francisco, California. The SIERRA CLUB has approximately 130,000 members of whom approximately 40,000 live in the area of San Francisco Bay and the Delta formed by the Sacramento and San Joaquin Rivers. The SIERRA CLUB is dedicated to the preservation and conservation of the natural resources, fish and wildlife of the United States including its rivers, bays, wetlands, deltas and estuarine areas. The SIERRA CLUB has regularly served as a responsible representative of persons similarly interested. Included in the membership of the SIERRA CLUB are many persons who use the waters referred to herein for recreational purposes, including but not limited to boating, fishing and swimming. The SIERRA CLUB brings this action in behalf of said members, as well as in its own behalf, and will adequately represent the interests of such persons. One of the purposes of the SIERRA CLUB is to represent persons interested in the protection and preservation of natural resources and the environment by such means, among others, as the commencement of legal action when the SIERRA CLUB believes such action is necessary or appropriate. The SIERRA CLUB and its members are adversely affected and aggrieved by the acts complained of herein.

3. Plaintiff FRIENDS OF THE EARTH (hereinafter FOE) is a non-profit corporation organized and operating under the laws

of the State of New York, with a principal place of business in San Francisco, California. FOE, by its activities and its conduct is committed to the preservation, restoration and rational use of the environment, especially in the restoration of those portions of the earth which have been mistreated by man, and in the preservation of remaining wilderness areas. FOE has regularly served as a responsible representative and spokesman of persons similarly interested in litigation and administrative and legislative proceedings affecting the environment. FOE brings this action on behalf of its members and in its own behalf and will adequately represent the interests of such persons. FOE's interest and the interests of its members are adversely affected and are directly aggrieved by those acts of defendants as hereinafter more fully appears, including the loss of recreational activities and esthetic enjoyment.

4. Plaintiff HANK SCHRAMM is and has been for the past 10 years engaged in the business of commercial fishing and the operation of sports-fishing party boats in the waters of San Francisco Bay and of the Pacific Ocean in the region of San Francisco. HANK SCHRAMM has an economic interest in and depends for his livelihood on the maintenance, preservation and conservation of sports and commercial fisheries in San Francisco Bay and in the adjoining waters of the Pacific Ocean and would be adversely affected by the diversions of water from the discharge of polluted water into the Sacramento River and Delta and by other acts of defendants complained of here.

5. Plaintiff WILLIAM DIXON is a lifelong resident of California and the San Francisco Bay area. DIXON owns substantial property in the Sacramento-San Joaquin Delta region, to wit, partnership in the St. Germain Duck Club on Grizzly Island. The diversion of water and pollution of San Francisco Bay by the acts of the defendants as hereinafter more fully appears, directly and substantially affect the economic value of his property interests and are detrimental to the recreational and esthetic enjoyment of his property.

6. Defendant ROGERS C. B. MORTON is the Secretary of the Interior of the United States and is responsible for the administration of the United States Department of the Interior.

7. Defendant GILBERT G. STAMM is the Acting Commissioner of the Bureau of Reclamation of the United States Department of the Interior.

8. Defendant HOWARD H. CALLAWAY is the Secretary of the Army of the United States.

9. Defendant WILLIAM C. GRIBBLE, JR. is the Chief of Engineers of the United States Army and the Administrator of the United States Army Corps of Engineers.

10. Defendant GEORGE B. FINK is the Division Engineer of the South Pacific Division of the United States Army Corps of Engineers and maintains his office in the City and County of San Francisco, State of California. Included within the geographic boundaries of the South Pacific Division of the Corps of Engineers are the Sacramento River, the Sacramento-San Joaquin Delta, San Francisco Bay and adjoining waters of the Pacific Ocean. BRIG. GEN. FINK is responsible for the issuance of permits granting the approval of Chief of Engineers and Secretary of the Army with respect to structures affecting navigable waters of the United States within the geographic boundaries of said South Pacific Division.

11. Defendant NORMAN B. LIVERMORE, JR. is the Secretary for Resources of the State of California in which capacity he supervises and administers the operations of the Resources Agency of the State of California.

12. Defendant JOHN R. TERRINK is the Director of the Department of Water Resources, which is a department within the Resources Agency of the State of California.

GENERAL ALLEGATIONS

13. Plaintiffs seek declaratory relief adjudicating and decreeing that existing and proposed diversions of water from the Sacramento and San Joaquin Rivers and their tributaries

and the depositing of waste water therein by the State of California and the United States Bureau of Reclamation, as more particularly described below, cannot proceed until the defendants have complied with the laws and statutes of the United States and the State of California respecting conservation of fish, wild life and other natural resources, protection of water quality and the construction of facilities affecting navigable waters of the United States. Plaintiffs further seek injunctive relief enjoining said diversions of water until such time as the studies and determinations required by law have been made and the approvals required by law have been obtained.

14. The purpose of this action is to preserve and protect the quality of water and the fish and wild life habitat in the Sacramento and San Joaquin Rivers, the Sacramento-San Joaquin Delta, and San Francisco Bay, including Suisun and San Pablo Bays, and to prevent permanent and irreparable damage to fisheries, public health and recreation which would be caused by excessive diversion of water from the Sacramento and San Joaquin Rivers.

15. The Sacramento and San Joaquin Rivers combine to drain the Central Valley of California, which comprises about 37% of the total land area of the State of California.

16. The Sacramento-San Joaquin Delta ("Delta") contains approximately 700 miles of navigable meandering waterways which provide a unique environment for a variety of fish and other aquatic life. Approximately 25% of California warm water and anadramous sport fishing and 80% of the commercial salmon fishing of California are dependent upon the Delta environment.

17. The Delta and the marshes and wetlands adjoining the Delta and downstream waters are a wintering area and a vital natural habitat for migratory birds on the Pacific Flyway.

18. San Francisco Bay constitutes one of the major and most important estuaries in the United States. More than four million people reside in the metropolitan Bay Area and use and

depend in one way or another upon the water in San Francisco Bay for recreation, commerce or esthetic enjoyment. These uses are contingent upon the water quality of San Francisco Bay, which is critically dependent upon continued discharge of fresh water from the Delta to provide flushing and circulation necessary to reduce salinity content, phosphate concentration and pollution of the waters of San Francisco Bay.

19. As more particularly alleged hereinbelow, the Secretary of the Interior of the United States is charged with the responsibility for preserving, conserving and protecting the fish, wild life and other natural resources of the United States. The Secretary of the Interior has failed to discharge this responsibility and has instead permitted the Bureau of Reclamation to promote and commence the construction of facilities, described in paragraphs 21 through 32, which would have the combined effects (1) of diverting from the Sacramento River much of the water which otherwise would flow from it into San Francisco Bay and (2) of causing substantial pollution of the Delta and San Francisco Bay by causing water drained from the San Joaquin Valley which has been polluted by pesticides and other poisonous wastes to be deposited directly into the Delta.

State Water Project

20. In 1959, the Legislature of the State of California adopted the Burns-Porter Act which authorized the construction of the "State Water Project", which project would consist of a system of dams, canals, pumping plants and other facilities designed to divert water in excess of four million acre-feet per year from Northern California to other parts of the State of California, primarily Southern California. The Burns-Porter Act was submitted to and approved by the voters of the State of California on November 8, 1960. The State Water Project was designed to utilize existing federal facilities, is financed in large part by federal funds, and is designed to operate in coordination with the Central Valley Project of the United States Bureau of Reclamation. Some of the essential facilities of the State

Water Project are "joint use facilities" which also constitute integral parts of the Central Valley Project of the United States Bureau of Reclamation.

21. The State of California, through its Resources Agency and Department of Water Resources, has entered into contracts pursuant to which it has agreed to use its best efforts to deliver 4.23 million acre feet of water annually. The primary purchasers of water are the Kern County Water Agency, which has agreed to purchase 1,153,000 acre-feet annually, and the Metropolitan Water District of Southern California, which has entered into contracts for 2,001,500 acre-feet per year.

Delta Pumping Plant

22. The State Water Project provides for obtaining substantially all of the 4.23 million acre-feet of water required annually by said project from the Sacramento River and its tributaries. Among the facilities completed or partially constructed for this purpose are the Oroville Dam on the Feather River and the Delta Pumping Plant, which is located in the Sacramento River Delta. The purpose of the Delta Pumping Plant is to divert approximately four million acre-feet of water per year from the Sacramento River to be transported by means of canals, pumping plants and other facilities to other areas in California, primarily Southern California. The Delta Pumping Plant has been financed in part with money contributed by the federal government and has been and is being constructed with the assistance of and in cooperation with the United States Bureau of Reclamation.

23. The Delta Pumping Plant is located on a body of water known as Clifton Court Forebay, essentially a holding area for water to be pumped through the plant directly into the California Aqueduct, and was created by the California Department of Water Resources and the Bureau of Reclamation by excavating and building dikes around the periphery of an area of land within the Delta known as the Clifton Court Tract.

Central Valley Project

24. The United States Bureau of Reclamation has sponsored and administered the construction and operation of the Central Valley Project, which consists of a series of reservoirs, pumping plants, canals and other facilities for the purpose of controlling the flow of water in the Sacramento River, generating hydro-electric power and providing water for irrigation and other uses in the Central Valley of California.

Tracy Pumping Plant

25. Included in the facilities of the Central Valley Project is the Tracy Pumping Plant, located on an inlet channel of Old River in the Delta. The purpose of the Tracy Plant is to divert water from the Delta by means of pumping into the 115 mile long Delta-Mendota Canal, which leads to various locations in the Central Valley of California.

26. The Bureau of Reclamation presently is diverting approximately 1,500,000 acre-feet of water annually from the Sacramento and San Joaquin Rivers by means of the Tracy Pumping Plant and the Delta-Mendota Canal.

Peripheral Canal

27. The State of California and Bureau of Reclamation propose jointly to finance, construct and operate a canal approximately 43 miles in length from a point on the Sacramento River near Hood, California, to a point in the Sacramento River Delta adjacent to the Tracy Pumping Plant and the Delta Pumping Plant. This canal is known as and is referred to herein as the "Peripheral Canal". The State of California and Bureau of Reclamation propose that the Peripheral Canal be generally 400 feet wide and 30 feet deep.

28. The proposed purpose and function of the Peripheral Canal is to transport fresh water to the Delta and Tracy Pumping Plants from a point on the Sacramento River up-

stream from both the point of salt water intrusion and the point where the polluted waters of the San Joaquin River join the Sacramento River and thereby to ensure that saline and polluted water in the Delta does not enter the pumps of the Tracy Pumping Plant or the Delta Pumping Plant.

29. The State of California and Bureau of Reclamation have expended public funds in the millions of dollars for the engineering design of the Peripheral Canal and have commenced excavation or propose to commence excavation for the Peripheral Canal in the near future. The State of California has approved and authorized the construction of the Peripheral Canal and the Department of the Interior has submitted to Congress a recommendation that the federal government participate in the financing and construction thereof. The State of California, through its Resources Agency and Department of Water Resources has publicized its position that it will proceed with construction of the Peripheral Canal regardless whether federal participation is authorized. The Task Force appointed to recommend an Environmental Protection Agency position on water quality in the Delta has submitted a preliminary report concluding that the Peripheral Canal, as now contemplated, should not be constructed.

East Side Canal

30. The Bureau of Reclamation further proposes to divert an additional 2,500,000 acre-feet of water annually from the Sacramento and San Joaquin Rivers and their tributaries by means of a proposed canal, to be known as the East Side Canal, reservoirs, pumping plants and other related facilities, all of which are referred to collectively herein as the East Side Canal, the construction of which has commenced or is about to commence.

San Luis Drain

31. The Bureau of Reclamation has commenced the construction of a facility known as the "San Luis Drain" for the purpose of collecting water drained from agricultural lands and

other wastes in the San Joaquin Valley and transmitting this water to the Delta where it will be deposited to flow thence into San Francisco Bay. The water deposited by this means in the Delta and San Francisco Bay will be so polluted with pesticides, herbicides and other wastes as to be unfit even for irrigation. The San Luis Drain will consist primarily of a canal 188 miles in length and related facilities for the collection of waste waters and the depositing of such waters into the Delta.

Effects of Diversion of Water from The Sacramento and San Joaquin Rivers

32. The proposed diversions of water from the Sacramento and San Joaquin Rivers by means of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant and East Side Canal will substantially reduce the flow of water in the Sacramento River and from the Sacramento River into San Francisco Bay. At the present time, the operation of the Tracy Pumping Plant and the partially competed Delta Pumping Plant causes a reversal of the direction of flow in the Delta thereby causing salt water in the lower reaches of the Delta to intrude further upstream than such intrusion otherwise would reach and adversely affecting agricultural property in the Delta region and recreational and esthetic enjoyment of the Delta.

33. The resulting reduction in the flow of water into San Francisco Bay will delay and reduce the flusing of wastes and pollution from San Francisco Bay and thereby cause and result in an increase in the pollution of San Francisco Bay Waters.

34. The diversions of water referred to herein will alter the currents, water levels and volumes of water flow in the Sacramento River, the San Joaquin River and the Sacramento-San Joaquin Delta and thereby directly affect navigation in said waters and the operation in said waters of pleasure boats, ships and other vessels.

35. The diversion of water proposed by the State of California and Bureau of Reclamation will increase the salinity of the Sacramento River and Delta and will thereby alter and adversely affect marine life and the habitat of migratory birds in said waters and in wetlands, marshes and other adjacent areas.

36. The diversions of water from the Sacramento River and its tributaries commenced and contemplated by defendants will, unless restrained, cause substantial and irreparable injury to marine life, plant and animal life, wild fowl and recreation in the Sacramento River, the Delta, San Joaquin River, San Francisco Bay and adjoining waters of the Pacific Ocean and would cause a substantial increase in the pollution of all of said waters.

37. The acts of defendants complained of herein, the construction and operation of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant, East Side Canal and San Luis Drain, the diversion of water proposed by the defendants and the dumping of agricultural and industrial wastes into the Delta by means of the San Luis Drain as proposed by defendants will cause substantial and irreparable injury to the plaintiffs and to millions of people who reside in the area of the waters referred to herein and who use said waters for recreation and esthetic enjoyment, many of whom are members of plaintiffs Sierra Club and Friends of the Earth and look to said organizations to protect their interest in the preservation and conservation of those waters and the fish, wild life and other marine life which have their habitat in and around those waters.

FIRST CLAIM FOR RELIEF

The Rivers and Harbors Act of 1899

38. Plaintiffs refer to and by this reference incorporate herein paragraphs 1 through 38 of the complaint.

39. The construction, commencement of construction, or operation of the Peripheral Canal, the Delta Pumping Plant, the San Luis Drain, the East Side Canal or the Tracy Pumping Plant is, or would be, unlawful until such time as the locations and plans of said facilities are submitted to and approved by Congress, the Chief of Engineers of the United States Army Corps of Engineers and the Secretary of the Army pursuant to Section 9 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 401, which section states:

> It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of the Army: *Provided,* that such structure may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of the Army before construction is commenced: *And provided further,* that when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of the Army, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and recieved the approval of the Chief of Engineers and of the Secretary of the Army.

40. The Sacramento River, the Sacramento-San Joaquin Delta, the San Joaquin River and San Francisco Bay constitute navigable waters within the meaning of the River and Harbors Act of 1899.

41. Neither the locations nor the plans of the Peripheral Canal, East Side Canal, San Luis Drain, Tracy Pumping Plant or Delta Pumping Plant have been submitted to or approved by Congress, the Chief of Engineers of the United States Army Corps of Engineers or by the Secretary of the Army.

42. The construction of the Peripheral Canal, East Side Canal, San Luis Drain, Tracy Pumping Plant or Delta Pumping Plant would each constitute or require the construction of a bridge, dam, dike, or causeway over or in a port, roadstead, haven, harbor, canal, navigable river or other navigable water of the United States. Specifically, each of said facilities requires the construction of openings in dikes adjoining the Sacramento River or the Delta to permit the inflow of water, in the case of the East Side Canal, the Peripheral Canal, Tracy Pumping Plant and Delta Pumping Plant, or the outflow of water in the case of the San Luis Drain. The operation of each of said facilities would cause or result in the diversion of water from or the discharge of water into navigable water of the United States which diversion and discharge are unlawful in the absence of the approval of Congress, the Secretary of the Army and Chief of Engineers required by the Rivers and Harbors Act of 1899 as aforesaid.

43. The building or commencement of the building of or the operation of the Peripheral Canal, East Side Canal, San Luis Drain, Delta Pumping Plant or Tracy Pumping Plant is further made unlawful by Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C.A. § 403, which section provides as follows:

> "The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited;

and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same."

44. The construction of the Peripheral Canal, Delta Pumping Plant, San Luis Drain, East Side Canal, or Tracy Pumping Plant would each require or constitute the creation of an obstruction to the navigable capacity of the waters of the United States, to wit, the waters of the Sacramento River, the Sacramento-San Joaquin Delta, the San Joaquin River, and San Francisco Bay, and therefore would be or is in substantial violation of the provisions of Section 403 of the Rivers and Harbors Act of 1899 and is in excess of the statutory powers and authority of defendants to the detriment and irreparable harm of plaintiffs.

45. The building or commencement of the building of the Peripheral Canal, Delta Pumping Plant, East Side Canal, San Luis Drain, or Tracy Pumping Plant would each require or constitute the building or commencement of the building of a wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty or other structure in a port, roadstead, haven, harbor, canal, navigable river, or other water of the United States and is or would be unlawful pursuant to Section 403 of the Rivers and

Harbors Act of 1899 unless and until such time as the plans thereof have been affirmatively authorized by Congress, recommended by the Chief of Engineers of the United States Army Corps of Engineers and authorized by the Secretary of the Army.

46. The construction or operation of the Peripheral Canal, Delta Pumping Plant, San Luis Drain, East Side Canal and Tracy Pumping Plant would or did each have the effect of altering or modifying the course, location, condition and capacity of the channels of navigable waters of the United States, to wit, the Sacramento River, the Delta, the San Joaquin River and San Francisco Bay, and is therefore unlawful pursuant to Section 403 of the Rivers and Harbors Act of 1899 because such work has not been affirmatively authorized by Congress, recommended by the Chief of Engineers of the United States Army Corps of Engineers and authorized by the Secretary of the Army. Specifically, each of said facilities, by diverting water from or discharging water into said navigable waters, or waters of the United States, would alter or modify the direction, quantity and rate of flow of said navigable waters. The continuing and substantial destructive alteration of the Delta and San Francisco Bay environment resulting from the operation of said failities by the State of California and Bureau of Reclamation is in violation of their statutory jurisdiction and authority and is detrimental to the rights and interests of the plaintiffs. The operation of the Tracy Pumping Plant and Delta Pumping Plant has, prior to the commencement of this action, caused reversals of the normal direction of the flow in said navigable waters and has reduced the level of said water below normal and customary levels, which reversals of flow and reduction in water levels has caused direct damage to fish and wild life and the recreational capacity of the Delta region. The Peripheral Canal would itself constitute a substantial alteration and modification of the navigable waters of the Sacramento River.

47. Congress has not approved the diversions of water from and discharge of water into navigable waters of the United States, the alteration and modification of the course, location, condition and capacity of said waters, or the obstruction to the navigable capacity of said waters, which would be caused by or result from the construction or operation of the Peripheral Canal, Tracy Pumping Plant, Delta Pumping Plant, San Luis Drain or East Side Canal.

48. The Chief of Engineers has not recommended and the Secretary of the Army has not approved the diversions of water from and discharge of water into navigable waters of the United States, the alteration and modification of the course, location, condition and capacity of said waters, or the obstructions to the navigable capacity of said waters which would be caused by or result from the construction or operation of the Peripheral Canal, Tracy Pumping Plant, Delta Pumping Plant, San Luis Drain or East Side Canal or the plans therefor.

SECOND CLAIM FOR RELIEF

49. Plaintiffs refer to and by this reference incorporate herein paragraphs 1 through 48 of the complaint.

50. Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C.A. § 407, frequently referred to as the "Refuse Act", provides as follows:

> "It shall not be lawful to throw, discharge, or deposit, or cause, suffer or procure to be thrown, discharged, or deposited either from or out of any ship, barge or other floating craft of any kind, or from the shore, wharf, manufacturing establishment or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States or into any tributary of any navigable water from which the

same shall float or be washed into such navigable water; and it shall not be lawful to deposit or cause, suffer or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary or any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided* that nothing herein contained shall extend to, apply to or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public works: *And provided further* that the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful."

51. The construction and operation of the San Luis Drain will result in the discharge into navigable waters of the United States of polluted water, pesticides, herbicides and agricultural and other wastes in violation of said Section 13 of the Rivers and Harbors Act of 1899, and is in substantial violation of the statutory jurisdiction and authority of the Bureau of Reclamation, defendants ROGERS C. B. MORTON and GILBERT G. STAMM and the other defendants herein and is detrimental to the rights and interests of plaintiffs.

THIRD CLAIM FOR RELIEF

Fish and Wildlife Coordination Act

52. Plaintiffs refer to and by this reference incorporate herein paragraphs 1 through 51 of the complaint.

53. The impounding or diversion of the waters of the Sacramento or San Joaquin Rivers by means of the Tracy Pumping Plant, Delta Pumping Plant, East Side Canal or Peripheral Canal is made unlawful by the Fish and Wildlife Coordination Act, 16 U.S.C.A. §§ 661-666c, specifically Section 2 thereof, 16 U.S.C.A. § 662, which prohibits such impounding or diversion by any department or agency of the United States or by any public or private agency unless such department or agency shall have first consulted with the United States Fish and Wildlife Service, Department of the Interior, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources.

54. The construction or operation of the Tracy Pumping Plant, Delta Pumping Plant, East Side Canal or Peripheral Canal will each constitute or result in the impounding or diversion of waters of the Sacramento or San Joaquin Rivers. Specifically, by means of said facilities, defendants propose to impound and divert in excess of seven million acre feet of water per year from said rivers and their tributaries.

55. Neither the State of California nor the Bureau of Reclamation has consulted with the United States Fish and Wildlife Service, Department of the Interior, with a view to the conservation of wildlife resources of preventing loss of and damage to such resources in the manner required by the Fish and Wildlife Coordination Act.

56. The Fish and Wildlife Coordination Act further provides in Section 2(b) thereof, 16 U.S.C.A. § 662(b), that the reports and recommendations of the Secretary of the Interior on the wildlife aspects of such projects and any report of the head of the State agency exercising administration over

the wildlife resources of the State, based on surveys and investigations conducted by the United States Fish and Wildlife Service and such State agency for the purpose of determining the possible damage to wildlife resources and for the purpose of determining means and measures that should be adopted to prevent the loss of, or damage to such wildlife resources, shall be made an integral part of any report prepared or submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects when such reports are presented to Congress or to any agency or person having the authority or the power, by administrative action or otherwise, (1) to authorize the construction of water-resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects. Said section further provides that the recommendations of the Secretary of the Interior shall be as specific as is practicable and shall describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages.

57. The Secretary of the Interior has made no report or recommendation pursuant to and in the manner required by said Section 2(b) of the Fish and Wildlife Coordination Act, and no such report has been made a part of any report prepared or submitted to the Congress, the Secretary of the Army, the Corps of Engineers of the United States Army or any other agency of the Federal Government as required by said Section 2(b).

58. The Fish and Wildlife Coordination Act further provides, in Section 2(b) thereof, that the project plan for any diversion or impounding of waters shall include "such justifiable means and measures for wildlife purposes as the reporting agency finds should be adopted to obtain maximum overall project benefits."

59. The project plans of the Peripheral Canal, Delta Pumping Plant, East Side Canal, San Luis Drain and Tracy Pumping Plan in no instance include such justifiable means and measures for wildlife purposes as are required by said Section 2(b) of the Fish and Wildlife Coordination Act and no studies or reports have been made by any agency of the California state government or of the federal government sufficient to permit a determination to be made of the means and measures necessary to prevent loss of or damage to wildlife resources as the result of the construction or operation of said facilities.

60. The existing and proposed impounding and diversion of the waters of the Sacramento and San Joaquin Rivers is further made unlawful by Section 3 of the Fish and Wildlife Coordination Act, 16 U.S.C.A. § 663, by reason of the failure of the State of California and the Department of the Interior to make adequate provisions for the use of said facilities for the conservation, maintenance and management of wildlife resources as required by said Section 3 of the Fish and Wildlife Coordination Act, subsection (a) of which provides:

> "Subject to the exceptions prescribed in section 662(h) of this title, whenever the waters of any stream or other body of water are impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, adequate provision, consistent with the primary purposes of such impoundment, diversion or other control, shall be made for the use thereof, together with any areas of land, water, or interests therein, acquired or administered by a Federal agency in connection therewith, for the conservation, maintenance and management of wildlife resources thereof, and its habitat thereon, including the development and improvement of such wildlife resources pursuant to the provisions of section 662 of this title."

61. The State of California and the Department of the Interior have not made adequate provisions for the use of the Peripheral Canal, East Side Canal, San Luis Drain, Delta Pumping Plant and Tracy Pumping Plant for the conservation, maintenance and management of wildlife resources affected by said facilities in the manner required by said Section 3 of the Fish and Wildlife Coordination Act.

62. For the reasons set forth in paragraphs 53 through 62 above, the construction, commencement of construction, operation or continued operation of the Peripheral Canal, East Side Canal, San Luis Drain, Delta Pumping Plant or Tracy Pumping Plant is and will be unlawful until such time as the defendants (1) have consulted with the United States Fish and Wildlife Service, Department of the Interior in the manner required by the Fish and Wildlife Coordination Act, (2) have presented to the Congress reports and recommendations of the Secretary of the Interior on the wildlife aspects of said facilities including (a) a report of the head of the agency of the State of California exercising administration over the wildlife resources of the State of California and (b) a specific description of "such justifiable means and measures for wildlife purposes" as should be adopted to achieve compliance with the national policies set forth in and the requirements of the Fish and Wildlife Coordination Act, and (3) have made adequate provision for the conservation, maintenance and management of wildlife resources of the Sacramento and San Joaquin Rivers, the Delta, San Francisco Bay and the adjoining waters of the Pacific Ocean. The continuing construction or operation of said facilities or approval thereof by the defendants and each of them is in violation of their statutory jurisdiction and authority and is detrimental to the rights and interests of plaintiffs.

FOURTH CLAIM FOR RELIEF

National Environmental Policy Act of 1969

63. Plaintiffs refer to and by this reference incorporate herein paragraphs 1 through 62 of the complaint.

64. The National Environmental Policy Act of 1969 ("NEPA") Public Law 91-190, 83 Stat. 852, specifically Section 101 thereof, declares a national policy of encouraging productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, and to enrich the understanding of the ecological systems and natural resources important to the Nation.

65. Section 101 of NEPA further provides that it is the responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may

> (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
>
> (2) assure for all Americans safe, healthful productive and esthetically and culturally pleasing surroundings;
>
> (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
>
> (4) preserve important, historic, cultural and natural aspects of our national heritage, and maintain, wherever possible an environment which supports diversity and variety of individual choice;
>
> (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
>
> (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

66. Section 102 of NEPA provides that to the fullest extent possible the policies, regulations and public laws of the United

States shall be interpreted and administered in accordance with the policies set forth in NEPA and that all agencies of the federal government shall:

> (a) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment;
>
> (b) identify and develop methods and procedures, in consultation with the Council of Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;
>
> (c) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on
>
> > (i) the environmental impact of the proposed action,
> >
> > (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
> >
> > (iii) alternatives to the proposed action,
> >
> > (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
> >
> > (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

67. The environmental impact statement prepared for the San Luis Drain is inadequate and does not meet the statutory requirements, in that it fails to describe in detail the

environmental impact, adverse environmental effects, long-term and short-term balance of use and productivity, irreversible and irretrievable commitments of resources and alternatives to the San Luis Drain. The location and manner of discharge of the San Luis Drain are currently being determined or soon will be determined by the Secretary of the Interior. This determination must be made in accordance with the policies set forth in NEPA, Fish and Wildlife Coordination Act and Estuarine Areas Act and must be preceded by preparation of a statement ["Environmental Impact Statement"] in compliance with Section 102(c) of NEPA, detailing the environmental effects of and the alternatives to further construction of the Drain and the proposed discharges into it.

68. Neither the Corps of Engineers nor the Bureau of Reclamation has prepared a detailed statement as required by Section 102(c) of NEPA with respect to water being diverted, at past and present levels, by means of the Tracy Pumping Plant, Delta Pumping Plant, East Side Canal or Peripheral Canal. Said detailed statement must contain information on the above project or proposals with respect to environmental impact, adverse environmental effects, long-term and short-term balance of use and productivity, irreversible and irretrievable commitments of resources and alternatives to those projects or proposals.

69. Neither the Corps of Engineers nor the Bureau of Reclamation has prepared a detailed statement with respect to environmental impact, adverse environmental effects, long-term and short-term balance, irreversible and irretrievable commitments of resources and alternatives to the proposals which would result from diversions of larger quantities of water than are presently being diverted by means of the Tracy Pumping Plant, Delta Pumping Plant, East Side Canal or Peripheral Canal. Additionally, no statement has been prepared advising Congress of the environmental effects which would result from congressional authorization of different levels of diversion.

70. The existing and proposed diversions of water from the Sacramento and San Joaquin Rivers by means of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant and East Side Canal and the discharge of polluted water and wastes in the Delta and San Francisco Bay by means of the San Luis Drain contravene the national policy set forth in NEPA and is in substantial violation of the statutory jurisdiction, authority and power of defendants to the detriment of the rights and interest of plaintiffs.

FIFTH CLAIM FOR RELIEF

71. Plaintiffs refer to and by this reference incorporate herein paragraphs 1 through 70 of the complaint.

Estuarine Areas Act

72. The Estuarine Areas Act, 16 U.S.C. §§ 1221 *et seq.* establishes that it shall be the public policy of the United States and of Congress to protect, conserve and restore the estuaries of the United States.

73. The San Francisco Bay and the Sacramento River Delta are estuaries of the United States.

74. The maintenance of an adequate flow of water at all times in the Sacramento River and from the Sacramento River into San Francisco Bay is essential to the protection, conservation and restoration of San Francisco Bay and the Delta.

75. The diversion of water from the Sacramento River or the San Joaquin River, whether by means of the Peripheral Canal, the Delta Pumping Plant, the East Side Canal, the Tracy Pumping Plant or otherwise, and the deposit of polluted water in the Delta by means of the San Luis Drain, hinders and prevents adequate protection, conservation and restoration of San Francisco Bay and the Delta.

Federal Water Pollution Control Act

76. The Federal Water Pollution Control Act, 62 Stat. 115 (1948), as amended, 33 U.S.C. §§ 1151 *et seq.*, establishes a national policy for the prevention, control and abatement of water pollution and the enhancement of the quality and value of the water resources of the United States.

77. Section 1171(a) of the Federal Water Pollution Control Act provides that "Each Federal agency . . . . having jurisdiction over any real property or facility, or engaged in any Federal public works activity of any kind shall, consistent with the paramount interest of the United States as determined by the President, insure compliance with applicable water quality standards and the purposes of this chapter in the administration of such property, facility or activity."

78. The President of the United States has elaborated on federal policy with regard to water pollution by issuing Executive Order 11507, 35 F.R. 2573 (1970), which states:

> It is the intent of this order that the Federal Government in the design, operation, and maintenance of its facilities shall provide leadership in the nationwide effort to protect and enhance the quality of our air and water resources.

79. The construction or operation of the Peripheral Canal, East Side Canal, San Luis Drain, Delta Pumping Plant, or Tracy Pumping Plant is or would be contrary to the national policy established by the Federal Water Pollution Control Act in that the diversion of water in connection with the construction or operation of any of said facilities would contribute to and cause an increase in the pollution of the Sacramento-San Joaquin Delta and San Francisco Bay.

80. The Secretary of the Interior has violated the policies expressed in the Federal Water Pollution Control Act and Executive Order 11507 and has failed to discharge his duties pursuant thereto in that he has failed to limit or modify the

operation or proposed operation of the facilities of the Central Valley Project so as to comply with the policies and requirements of the Federal Water Pollution Control Act and Executive Order 11507.

Failure of Defendants to Comply with Federal Statutes and National Policies

81. Defendants, WILLIAM C. GRIBBLE, JR., as Chief of Engineers of the Corps of Engineers of the United States Army, HOWARD H. CALLAWAY, as Secretary of the Army, and GEORGE B. FINK, as Division Engineer, are authorized and empowered to enforce compliance with the national policies set forth in the Estuarine Areas Act, the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act and the National Environmental Policy Act of 1969, with respect to structures and activities which require the approval of the Chief of Engineers pursuant to the Rivers and Harbors Act of 1899.

82. Said defendants cannot authorize, approve or recommend the creation of any obstruction to the navigable capacity of, any alteration or modification of the course, location, condition or capacity of, the diversion of waters from, the discharging of waters into or the impounding of the navigable or other waters of the United States in violation of or without giving due regard to the requirements of and the national policies expressed in the Estuarine Areas Act, the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act, and the National Environmental Policy Act of 1969.

83. Said defendants cannot authorize, approve or recommend the construction or operation of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant, East Side Canal or San Luis Drain until such time as they have been furnished with the following in compliance with the policies and requirements of the Estuarine Areas Act, the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act, and the Environmental Policy Act of 1969:

(a) A report of the Secretary of the Interior as required by the Fish and Wildlife Coordination Act, on the wildlife aspects of such projects based on surveys and investigations conducted by the United States Fish and Wildlife Service and the California Department of Fish and Game for the purpose of determining the extent of damage to wildlife resources which would result from such projects;

(b) A report of the Secretary of the Interior, as required by the Fish and Wildlife Coordination Act, on the means and measures which would have to be adopted to prevent the loss of or damage to wildlife resources in the San Joaquin and Sacramento Rivers, the Delta, San Francisco Bay and the adjoining portions of the Pacific Ocean as the result of the construction and operation of said facilities.

(c) A report of the Secretary of the Interior pursuant to the National Environmental Policy Act of 1969 on the environmental impact, the adverse environmental effects, the alternatives to, and the irreversible and irretrievable commitments of resources which would result from the construction and operation of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant, East Side Canal and San Luis Drain.

84. In seeking any approval of Congress of the construction or operation of the Peripheral Canal, Tracy Pumping Plant, Delta Pumping Plant, San Luis Drain or East Side Canal, defendants GILBERT G. STAMM, ROGERS C. B. MORTON, STATE OF CALIFORNIA, NORMAN B. LIVERMORE, JR. and JOHN R. TEERINK are required to submit to Congress the reports of the Secretary of the Interior referred to in the preceding paragraph of this complaint and to disclose to Congress the extent to and manner in which said construction or operation contravenes the policies set forth in and the requirements of the Estuarine Areas Act, the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act and the Environmental Policy Act of

1960, all of which said defendants have failed to do, as a result whereof the operation, construction or continued construction of said facilities is unlawful.

85. The operation, construction, continued operation or construction or the approval thereof by the defendants and each and all of them is in substantial violation of their statutory responsibilities, powers, jurisdiction and authority to the detriment of the rights and interests of plaintiffs.

SIXTH CLAIM FOR RELIEF

California Environmental Quality Act of 1970

86. Plaintiffs refer to and by this reference incorporate paragraphs 1 through 85 of the complaint.

87. The California Environmental Quality Act of 1970 ("CEQA"), California Public Resources Code Division 10, specifically Chapter 1 thereof, declares a state policy of developing and maintaining a high-quality environment now and in the future, providing the people of California with clean air and water, preventing elimination of fish and wildlife as a result of man's activities, ensuring that long-term protection of the environment be the guiding criterion in public decisions, requiring governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality and requiring governmental agencies to consider qualitative factors as well as economic and technical factors, long-term versus short-term benefits and costs and alternatives to proposed actions affecting the environment.

88. Section 2100 of the California Public Resources Code provides further that it is the state government's responsibility to take immediate steps and to coordinate actions of various state agencies to preserve the health and safety of the people of the state, that each citizen bears a responsibility to contribute to the overall environmental policy and that all agencies which

regulate the activities of people and corporations within the state and public agencies, whose activities affect the quality of the environment, shall, in regulating such activities, give major consideration to the prevention of damages to the environment.

89. In order that the above policy and intent may be properly effectuated Section 21100 of the Public Resources Code provides as follows:

> "All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment. Such a report shall include a detailed statement setting forth the following:
>
> (a) The environmental impact of the proposed action.
>
> (b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.
>
> (c) Mitigation measures proposed to minimize the impact.
>
> (d) Alternatives to the proposed action.
>
> (e) The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity.
>
> (f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented.
>
> (g) The growth-inducing impact of the proposed action."

90. Section 21101 further provides:

> "In regard to any proposed federal project within this state which may have a significant effect on the

environment and on which the state officially comments, the state officials responsible for such comments shall include in their report a detailed statement setting forth the matters specified in Section 21100 prior to transmitting the comments of the state to the federal government. No report shall be transmitted to the federal government unless it includes such a detailed statement as to the matters specified in Section 21100."

91. Section 21102 provides that no state agency, board or commission shall request funds, nor shall funds be authorized, if the project for which the funds are contemplated falls under the provisions of sections of the Act requiring environmental impact report, if the request for funds is not accompanied by an environmental impact report.

92. The Delta Pumping Plant, Peripheral Canal, East Side Canal, Tracy Pumping Plant and San Luis Drain are projects within the State of California, which have a significant effect on the environment.

93. The Delta Pumping Plant, Peripheral Canal, East Side Canal, Tracy Pumping Plant and San Luis Drain are "Projects" within the meaning of CEQA and therefore subject to its provisions.

94. The existing and proposed diversions of water to and from the Sacramento and San Joaquin Rivers by means of the Delta Pumping Plant, Peripheral Canal, East Side Canal, Tracy Pumping Plant or San Luis Drain are in substantial violation of the statutory jurisdiction, authority and power of the defendants to the detriment of the rights and interests of plaintiffs.

Failure of State Defendants to Comply With State Statutes and Policies

95. Defendants, STATE OF CALIFORNIA, NORMAN B. LIVERMORE, JR., as Secretary for Resources of the State of California and JOHN R. TEERINK, as Director of the Department of Water

Resources for the State of California, are authorized, empowered, and required by law to enforce compliance with the state policies set forth in the California Environmental Quality Act of 1970, with respect to the Delta Pumping Plant, the Peripheral Canal, the East Side Canal, the Tracy Pumping Plant and the San Luis Drain.

96. Said defendants have failed to prepare or cause to have prepared environmental impact reports for the Delta Pumping Plant and Peripheral Canal and are therefore in substantial violation of their statutory authority to the detriment of the rights and interests of plaintiffs.

97. Said defendants have failed to include in any report within the meaning of Section 21101 a detailed statement setting forth the matters specified in Section 21100 of the Public Resources Code, as regards the Tracy Pumping Plant, East Side Canal or San Luis Drain, all as required by Section 21101.

98. By reason of said defendants' failure to prepare or cause to have prepared environmental impact reports on the Delta Pumping Plant or Peripheral Canal and said defendants' failure to comply with the provisions of Section 21101 of the Public Resources Code as regards the Tracy Pumping Plant, East Side Canal or San Luis Drain, the operation or construction or continued operation or construction or any State of California participation in any or all of the projects hereinbefore mentioned is unlawful.

Basis for Declaratory and Injunctive Relief

99. A present controversy exists between plaintiffs and defendants in that defendants propose to proceed with the operation of the Tracy Pumping Plant, the completion and continued operation of the Delta Pumping Plant, and the construction of the Peripheral Canal and East Side Canal and San Luis Drain without obtaining the consent of Congress and the approvals of the Secretary of the Army and Chief of

Engineers which plaintiffs herein claim are required by law and without making due provision for the protection, preservation or conservation of the waters of San Francisco Bay, the Sacramento-San Joaquin Delta, the adjoining waters of the Pacific Ocean, the Sacramento and San Joaquin Rivers, the marshes, beaches and wetlands adjacent to these waters, and the marine life, plant life and wildlife which are dependent thereon and without complying with the requirements of law referred to herein.

100. Plaintiffs have no adequate remedy at law in that a money judgment could not compensate for the inquiry which would be suffered by the plaintiffs and by the class of persons represented by plaintiffs if defendants proceed with the activities plaintiffs seek to enjoin and cause substantial degradation of the quality of water in San Francisco Bay, the Sacramento-San Joaquin Delta, adjacent waters of the Pacific Ocean and the Sacramento and San Joaquin Rivers and further damage and endanger the future of the various species of marine life and wildlife which are dependent in whole or in part on the quality and flows of said waters.

101. The injury caused by said degradation of water quality and the act of defendants complained of herein would be irreparable and irreversible.

PRAYER FOR RELIEF

For the reasons set forth above, plaintiffs pray this Court to enter judgment herein as follows:

1. Declaring and adjudging that the Rivers and Harbors Act of 1899 makes unlawful the operation, construction or commencement or continuance of construction of the Delta Pumping Plant, Tracy Pumping Plant, Peripheral Canal, San Luis Drain, or the East Side Canal until such time as the consent and authorization of the Congress and the approval of the Secretary of the Army and Chief of Engineers has been obtained.

2. Declaring and adjudging that construction of the Peripheral Canal, Delta Pumping Plant, East Side Canal and San Luis Drain cannot commence or proceed further until such time as Congress and the Secretary of the Army and Chief of Engineers have been provided with the following:

(a) A report of the Secretary of the Interior, as required by the Fish and Wildlife Coordination Act, on the wildlife aspects of such projects based on surveys and investigations conducted by the United States Fish and Wildlife Service and the California Department of Fish and Game for the purpose of determining the extent of damage to wildlife resources which would result from such projects;

(b) A report of the Secretary of the Interior as required by the Fish and Wildlife Coordination Act, on the means and measures which would have to be adopted to prevent the loss of or damage to wildlife resources in the San Joaquin and Sacramento Rivers, the Delta, San Francisco Bay and the adjoining portions of the Pacific Ocean as the result of the construction and operation of said facilities.

(c) A report of the Secretary of the Interior pursuant to the National Environmental Policy Act of 1969 of the environmental impact, the adverse environmental effects, the alternatives to, and the irreversible and irretrievable commitments of resources which would result from the construction and operation of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant, East Side Canal and San Luis Drain.

3. Declaring and adjudging that the Secretary of the Army, Chief of Engineers, and the Division Engineer of the South Pacific Division of the Corps of Engineers must give due consideration to the requirements of and the

national policy set forth in the Rivers and Harbors Act of 1899, the National Environmental Policy Act of 1969, the Fish and Wildlife Coordination Act, the National Estuarine Areas Act, and the Federal Water Pollution Control Act in acting or passing upon any applications for approval of the operation or construction of the Peripheral Canal, Tracy Pumping Plant, Delta Pumping Plant, East Side Canal, San Luis Drain, or any related or appurtenant structures.

4. Enjoining the defendants from constructing or continuing the construction of and from operating the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant, East Side Canal or San Luis Drain until such time as Congress, the Secretary of the Army, and the Chief of Engineers have authorized the specific diversions of water from and discharge of water into the Delta and Sacramento River which would result from said construction or operation after having been furnished the following:

(a) A report of the Secretary of the Interior as required by the Fish and Wildlife Coordination Act, on the wildlife aspects of such projects based on surveys and investigations conducted by the United States Fish and Wildlife Service and the California Department of Fish and Game for the purpose of determining the extent of damage to wildlife resources which would result from such projects;

(b) A report of the Secretary of the Interior, as required by the Fish and Wildlife Coordination Act, on the means and measures which would have to be adopted to prevent loss of or damage to wildlife resources in the San Joaquin and Sacramento Rivers, the Delta, San Francisco Bay and the adjoining portions of the Pacific Ocean as the result of the construction and operation of said facilities.

(c) A report of the Secretary of the Interior pursuant to the Environmental Policy Act of 1969 of the environmental impact, the adverse environmental effects, the alternatives to, and the irreversible and irretrievable commitments of resources which would result from the construction and operation of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant, East Side Canal and San Luis Drain.

5. Enjoining defendants from submitting to Congress, to the Secretary of the Army or to the Chief of Engineers any proposal or request for authorization or approval of the construction or operation of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant, East Side Canal and San Luis Drain or any related or appurtenant structure unless such proposal or request is accompanied by the reports required by the Fish and Wildlife Coordination Act and the National Environmental Policy Act of 1969 and, in the event such proposals or requests are or have been made by any of the defendants named herein and are not accompanied by said reports, directing said defendant or defendants to submit said reports to the Congress, the Secretary of the Army and the Chief of Engineers in the shortest reasonable time.

6. Enjoining the further operation, construction or participation of the STATE OF CALIFORNIA in the Delta Pumping Plant, the Peripheral Canal, the East Side Canal, the Tracy Pumping Plant and the San Luis Drain until the proper state agencies comply with the dictates of CEQA.

7. For plaintiffs' costs of suit herein, including those costs incurred for expert witness fees, for the reasonable attorneys' fees of plaintiffs and for such other and further relief as the Court may deem proper.

Dated: December 21, 1973.

JOHN B. CLARK
JOHN B. BIGELOW

By JOHN B. BIGELOW
JOHN B. BIGELOW
Attorneys for Plaintiffs
SIERRA CLUB and
HANK SCHRAMM

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[Statement of Service omitted]

STATE DEFENDANTS' ANSWER

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Case Caption omitted]

ANSWER OF STATE DEFENDANTS TO FIRST AMENDED COMPLAINT

Come now the defendants State of California, Norman B. Livermore, Jr., as Secretary for Resources of the State of California, and John R. Teerink, as Director of Water Resources of the State of California, sued herein as Director of the Department of Water Resources of the State of California, sometimes collectively herein referred to as State defendants, and, answering the first amended complaint on file herein, admit, deny, and allege as follows:

FIRST DEFENSE

That the first amended complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

That the State of California and State defendants have not consented to be sued herein, nor has any of them.

THIRD DEFENSE

That the above entitled Court lacks jurisdiction over the State and State defendants, and each of them.

FOURTH DEFENSE

That the Court lacks jurisdiction over the subject matter of the first amended complaint.

FIFTH DEFENSE

That there is no Federal question or diversity of citizenship or proper cause for declaratory relief.

SIXTH DEFENSE

That the first amended complaint herein does not state a cause of action under Federal or State statutes.

SEVENTH DEFENSE

That the plaintiffs herein, and each of them, lack standing to sue.

EIGHTH DEFENSE

That the plaintiffs herein, and each of them, are guilty of laches and may not at this late date have the relief prayed, even if it were to be assumed, but not conceded, that there were any claim.

NINTH DEFENSE

Allege that the matter in controversy is not susceptible of evaluation and, therefore, that the State defendants deny that it exceeds $10,000.

TENTH DEFENSE

That the first amended complaint contains no allegations of detriment to the plaintiffs, no allegations of adverse effect upon the plaintiffs or allegations of diversity, the State of California not being a citizen of the United States, and the remaining State defendants in their official capacity not being or acting as citizens of the United States.

ELEVENTH DEFENSE

That there is no justiciable controversy stated in the first amended complaint.

TWELFTH DEFENSE

That the motion of State defendants heretofore made and filed and all points and authorities and matters in support thereof are hereby incorporated herein and made a part hereof and that, there being no cause for relief, the first amended complaint herein and this case, and each of them, should be dismissed.

THIRTEENTH DEFENSE

That the gravamen and gist of the first amended complaint is water quality in the Delta of the Sacramento and San Joaquin Rivers, sometimes herein referred to as the Delta, and that the plaintiffs, or some of them, are already participants in other actions pending in the courts of the State of California.

FOURTEENTH DEFENSE

That there is proper cause for abstention.

FIFTEENTH DEFENSE

That the first amended complaint contains no proper cause for class action.

SIXTEENTH DEFENSE

That the sixth claim for relief is barred by the provisions of section 21167 of the California Public Resources Code which provides in part as follows:

> "Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:
>
> > "(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project. . . ."

That the decision to carry out or approve the project or the commencement of the project all occurred more than 180 days prior to December 27, 1973, the date when plaintiffs' claim for relief under California Environmental Quality Act of 1970 was filed with the Court as the sixth claim for relief.

SEVENTEENTH DEFENSE

That the California Environmental Quality Act is not applicable to the Delta Pumping Plant nor to the California Aqueduct for the reason that the project was planned, constructed, and placed into operation prior to November 23, 1970, the effective date of the Act.

EIGHTEENTH DEFENSE

That the National Environmental Policy Act is not applicable to the Delta Pumping nor the California Aqueduct in that the project was planned, constructed, and put into operation prior to January 1, 1970, the effective date of said Act.

NINETEENTH DEFENSE

1. Answer to paragraph 1 of the complaint on file herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

2. Answering paragraph 2 of the complaint on file herein, that State defendants deny each and every, all and singular, the allegation therein for lack of information and belief.

3. Answering paragraph 3 of the complaint on file herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

4. Answering paragraph 4 of the complaint on file herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

5. Answering paragraph 5 of the complaint on file herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

6. Answer paragraph 6 of the complaint, that State defendants admit the allegations therein.

7. Answering paragraph 7 of the complaint, that State defendants admit the allegations therein.

8. Answering paragraph 8 of the complaint, that the State admits the allegations therein.

9. Answering paragraph 9 of the complaint, that the defendants admit the allegations thereof.

10. Answering paragraph 10 of the complaint, that the defendants admit the allegations thereof.

11. Answering paragraph 11 of the complaint, that State defendants admit that Norman B. Livermore, Jr., is the Secretary for Resources of the State of California, allege that he has general supervision over the departments of the Resources Agency of the State of California, allege that he is the officer in charge of the Resources Agency of the State of California, and deny each and every, all and singular, the remaining allegations contained therein.

12. Answering paragraph 12 of the complaint, that State defendants allege that John R. Teerink is the Director of Water Resources of the State of California; that the Director of Water Resources is the officer in charge of the Department of Water Resources of the State of California; that the Department of Water Resources of the State of California is one of the departments under the general supervision of the Secretary for Resources under the statutes therefor made and provided; and State defendants deny each and every, all and singular, the remaining allegations therein.

13. Answering paragraph 13 of the complaint, that State defendants allege that in the performance of their duties and in their operations they have complied with the applicable statutes in such cases made and provided, and will so comply, and State defendants deny each and every, all and singular, the remaining allegations therein.

14. Answering paragraph 14 of the complaint, that State defendants, having no information on the purpose or intention of plaintiffs herein, deny each and every, all and singular the allegations therein for lack of information and belief; and that State defendants deny that State defendants have caused, or will cause, excessive diversion of water from the Sacramento and San Joaquin Rivers, or either of them, or irreparable damage, or any damage, or harm to any person or any property.

15. Answering paragraph 15 of the complaint, that State defendants admit that the Sacramento and San Joaquin Rivers combine and drain the Central Valley of California, and deny each and every, all and singular, the remaining allegations therein for lack of information and belief.

16. Answering paragraph 16 of the complaint, that State defendants admit that the Delta contains navigable waterways which harbor fish and forms of aquatic life, and deny each and every, all and singular, the allegations therein for lack of information and belief.

18. Answering paragraph 18 of the complaint, that State defendants admit that the San Francisco Bay is a body of water affected by the tides, that waters from the Delta are discharged ultimately into the San Francisco Bay through other bays, and deny each and every, all and singular, the remaining allegations therein for lack of information and belief; that State defendants specifically deny that the San Francisco Bay is critically dependent upon continued discharge of fresh water from the Delta.

19. Answering paragraph 19 of the complaint, that State defendants deny each and every, all and singular, the allegations contained therein for lack of information and belief.

20. Answering paragraph 20 of the complaint herein, that State defendants admit that the Burns-Porter Act was adopted in 1959, that the Act authorized the construction of the State Water Project, that the Project would consist of a system of dams, canals, pumping plants, and other facilities designed to divert water in excess of 4,000,000 acre-feet a year from places

of diversion to other parts of the State of California and to various users, that the Burns-Porter Act was submitted to and approved by the voters of the State of California on November 8, 1960. That the State Water Project was designed to operate in coordination with the Central Valley Project, and that some of the essential facilities of the State Water Project are joint-use facilities, which also constitute integral parts of the Central Valley Project of the United States Bureau of Reclamation; and that State defendants deny each and every, all and singular, the remaining allegations therein.

21. Answering paragraph 21 of the complaint, that State defendants admit that the Department of Water Resources has entered into contracts under which it has agreed to use its best efforts to deliver 4.23 million acre-feet of water annually, that the primary purchasers of water are the Kern County Water Agency, which has agreed to purchase 1,153,400 acre-feet annually, and the Metropolitan Water District of Southern California, which has entered into contracts for 2,011,500 acre-feet a year; and that State defendants deny each and every, all and singular, the remaining allegations therein.

22. Answering paragraph 22 of the complaint, that State defendants allege that initially the State Water Project will obtain substantially all of that portion of the 4.2 million acre-feet required annually by said Project from the Sacramento and San Joaquin Rivers and their tributaries, that among the facilities completed or partially constructed for this purpose are the Oroville Dam on the Feather River and the Delta Pumping Plant, which is adjacent to the Delta, that the purpose of the Delta Pumping Plant is to divert approximately 4,000,000 acre-feet of water a year from the Sacramento River and Delta to be transported by means of canals, pumping plants, and other facilities to users in other areas in California; and that State defendants deny each and every, all and singular, the remaining allegations therein.

23. Answering paragraph 23 of the complaint, that State defendants admit that the Delta Pumping Plant is located near a body of water known as Clifton Court Forebay, allege that

Clifton Court Forebay is in an area formerly known as Clifton Court Tract, admit that the Delta Pumping Plant pumps water from Clifton Court Forebay into the California Aqueduct, and deny each and every, all and singular, the remaining allegations therein.

24. Answering paragraph 24 of the complaint herein, that State defendants lack information and belief as to the allegations therein and therefore deny each and every, all and singular, the allegations therein.

25. Answering paragraph 25 of the complaint herein, that State defendants lack information or belief as to the allegations thereof and therefore deny each and every, all and singular, allegations of said paragraph.

26. Answering paragraph 26 of the complaint herein, that State defendants deny each and every, all and singular, the allegations in said paragraph contained for lack of information and belief.

27. Answering paragraph 27 of the complaint herein, that State defendants allege that the Peripheral Canal is planned in the State Water Project and that it is proposed to be about 400 to 500 feet wide and about 42 miles long; allege that said Canal is proposed to be constructed between a point near Hood on the Sacramento River to Clifton Court Forebay near Old River; and that State defendants deny each and every, all and singular, the remaining allegations therein.

28. Answering paragraph 28 of the complaint herein, that State defendants allege that one of the purposes and functions of the Peripheral Canal is to transfer fresh water to the Delta and Tracy Pumping Plants from the Sacramento River, that other purposes of said Canal are the control of salinity intrusion, the maintenance of water quality adequate for irrigation purposes, preservation and enhancement of fish, wildlife, and recreational environment of the Delta, inter alia, and to achieve the same by planned release of fresh water at various points along the Canal aforesaid into the Delta; and that State defendants deny each and every, all and singular, the remaining allegations of said paragraph 28.

29. Answering paragraph 29 of the complaint herein, that State defendants allege that the State of California has expended public funds for engineering design of the Peripheral Canal; that the State has approved and authorized construction of the same; that the State Department of Water Resources is preparing an Environmental Impact Report on the same; that the State proposes to commence construction in 1975 and not prior to that year; and that State defendants deny each and every, all and singular, the remaining allegations therein for lack of information and belief.

30. Answering paragraph 30 of the complaint herein, that State defendants allege that the Tracy Pumping Plant, East Side Canal and San Luis Drain are Federal project facilities, none of which is designed, constructed, operated, or controlled by any of the State defendants, that no claim is stated against State defendants upon which relief may be granted; and that State defendants deny each and every, all and singular, the remaining allegations therein contained for lack of information and belief.

31. Answering paragraph 31 of the complaint herein, that State defendants incorporate herein and restate the allegations in answer of State defendants to paragraph 30, hereinabove, and deny each and every, all and singular, the remaining allegations in paragraph 31 of the complaint contained.

32. Answering paragraph 32 of the complaint herein, that State defendants allege that the proposed diversions of water from the Sacramento and San Joaquin Rivers by means of the Peripheral Canal, and East Side Canal will from time to time reduce the flow of water in the Sacramento River, that upstream storage facilities' releases will from time to time increase the flow of water in the Sacramento River, that at present the operation of the Tracy Pumping Plant and the Delta Pumping Plant contribute to a reversal of direction and reduction of net

flow from time to time in some channels of the Delta; and that State defendants deny each and every, all and singular, the remaining allegations in said paragraph 32; and that State defendants further allege that the control of salinity intrusion, and incursion, and its effect upon the flow of water in the Delta has been the subject of protracted public hearings, that a decision has been made thereon after such hearings by the State Water Resources Control Board of the State of California, a public agency vested with legal authority to establish water quality standards pursuant to State law as well as pursuant to the Federal Water Pollution Control Law, that the Department of Water Resources of the State of California and other departments and entities of the Resources Agency of the State of California as well as the Sierra Club, plaintiff herein, have participated in such hearings; that the State regulatory agency aforesaid received evidence relating to the volume of stream flow, direction of flow, water levels, currents, water diversion, and the effect that various alterations of those factors might have upon the qualities of water in the Delta aforesaid for beneficial uses within the meaning of the statutes in such cases made and provided, including irrigation, navigation, recreation, esthetics, and fish and wildlife, inter alia; that the function of prescribing water quality standards and the exercise of the right to divert water in conformance with such standards present questions of State law within the province of the State Water Resources Control Board aforesaid. That the decision aforesaid by State Water Resources Control Board was made in the year 1971; and that thereafter, judicial review of such decision having been expressly provided for by the statutes and laws of the State of California, two suits were filed in the Superior Court of the State of California in and for the County of Sacramento, and the same were consolidated and are now pending; that the Sierra Club is a party therein; that the plaintiffs above-named have failed to exhaust their remedies expressly provided for in the State courts. That their claim for relief herein is premature and that this Court may be, and is, beholden, in the exercise of sound discretion to abstain from

exercising jurisdiction to the end that the State of California may initially declare and interpret the State law and applicable provisions of the Federal Water Pollution Control Act.

33. Answering paragraph 33 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

34. Answering paragraph 34 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

35. Answering paragraph 35 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

36. Answering paragraph 36 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

37. Answering paragraph 37 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

38. Answering paragraph 38 of the complaint herein, that State defendants do hereby incorporate by reference and make a part hereof as though fully set forth at this place, their responses, and each of them, to paragraphs 1 to 37 of the complaint, both inclusive.

39. Answering paragraph 39 of the complaint herein, that State defendants deny each and every, all and singular, the allegations contained therein.

40. Answering paragraph 40 of the complaint herein, that State defendants allege that portions of the Sacramento River and San Joaquin Rivers within the Delta are navigable waters; that portion of San Francisco Bay are navigable; and that State defendants deny each and every, all and singular, the remaining allegations in paragraph 40.

41. Answering paragraph 41 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

42. Answering paragraph 42 of the complaint herein, that State defendants allege that the East Side Canal, San Luis Drain, and Tracy Pumping Plant, and each of them, are Federal facilities over which the State defendants have no jurisdiction or control; that State defendants deny that State works come within the purview of the Rivers and Harbors Act of 1899; and that State defendants further deny that any of such facilities are within the purview of section 9 of said Rivers and Harbors Acts, and that State defendants further deny each and every, all and singular, the remaining allegations therein.

43. Answering paragraph 43 of the complaint herein, that State defendants deny each and every, all and singular, the allegations contained therein, and, further, specifically deny that any such facilities come within the purview of section 10 of said Rivers and Harbors Act.

44. Answering paragraph 44 of the complaint herein, that State defendants deny each and every, all and singular, the allegations contained therein.

45. Answering paragraph 45 of the complaint herein, that State defendants deny each and every, all and singular, the allegations contained therein.

46. Answering paragraph 46 of the complaint herein, that State defendants deny each and every, all and singular, the allegations contained therein.

47. Answering paragraph 47 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

48. Answering paragraph 48 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein.

49. Answering paragraph 49 of the complaint herein, that State defendants hereby incorporate herein and make a part hereof their responses to paragraphs 1 to 48, both inclusive, of the complaint as though set forth at length at this place.

50. Answering paragraph 50 of the complaint herein, that State defendants deny each and every, all and singular, the allegations contained therein and allege that the statute therein is misquoted.

51. Answering paragraph 51 of the complaint herein, that State defendants deny each and every, all and singular, the allegations contained therein for lack of information and belief.

52. Answering paragraph 52 of the complaint herein, that State defendants herein incorporate by reference and make a part hereof their responses to 1 through 51 of the complaint, both inclusive.

53. Answering paragraph 53 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained; and that State defendants allege that they have complied with any applicable requirements of the Fish and Wildlife Coordination Act in connection with the construction of the Delta Pumping Plant.

54. Answering paragraph 54 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

55. Answering paragraph 55 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

56. Answering paragraph 56 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained and allege that the statute is found in its own manner and form.

57. Answering paragraph 57 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained for lack of information and belief.

58. Answering paragraph 58 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained, and allege that the statute is found in its own manner and form.

59. Answering paragraph 59 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

60. Answering paragraph 60 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein contained.

61. Answering paragraph 61 of the complaint herein, that State defendants herein deny each and every, all and singular, the allegations therein.

62. Answering paragraph 62 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein.

63. Answering paragraph 63 of the complaint herein, that State defendants hereby incorporate herein and make a part hereof their responses to paragraphs 1 through 62, both inclusive, as though set forth at length at this place.

64. Answering paragraph 64 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein, and allege that the statute is found in its own manner and form.

65. Answering paragraph 65 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein, and allege that the statute is found in its own manner and form.

66. Answering paragraph 66 of the complaint herein, that State defendant deny each and every, all and singular, the allegations therein, and allege that the statute is found in its own manner and form.

67. Answering paragraph 67 of the complaint herein, the State defendants lack information or belief as to the allegations thereof and therefore deny each and every, all and singular, the allegations of said paragraph.

68. Answering paragraph 68 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

69. Answering paragraph 69 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

70. Answering paragraph 70 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

71. Answering paragraph 71 of the complaint herein, that State defendants hereby incorporate herein and make a part hereof their responses to paragraphs 1 through 70 of the complaint, both inclusive, as though they were fully set forth at length at this place.

72. Answering paragraph 72 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein, and allege that the statute is found in its own manner and form.

73. Answering paragraph 73 of the complaint herein, that State defendants admit that portions of the Sacramento River and the San Joaquin River within the said Delta are estuaries of the United States; and that State defendants deny each and every, all and singular, the remaining allegations therein.

74. Answering paragraph 74 of the complaint herein, that State defendants are unable from the vagueness of the language therein to ascertain its meaning and have no information and belief thereon; and that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

75. Answering paragraph 75 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein.

76. Answering paragraph 76 of the complaint herein, that State defendants deny each and every all and singular, the allegations therein.

77. Answering paragraph 77 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein, and allege that the statute is found in its own manner and form.

78. Answering paragraph 78 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein, except that State defendants admit the quoted portion is a part of said executive order 11507.

79. Answering paragraph 79 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein.

80. Answering paragraph 80 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein, contained for lack of information and belief.

81. Answering paragraph 81 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

82. Answering paragraph 82 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

83. Answering paragraph 83 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein for lack of information and belief.

84. Answering paragraph 84 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein.

85. Answering paragraph 85 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein.

86. Answering paragraph 86 of the complaint herein, that the State defendants herein incorporate by reference and make a part hereof their responses to paragraphs 1 through 85 of the complaint, both inclusive.

87. Answering paragraph 87 of the complaint herein, that the State defendants admit that the California Environmental Quality Act of 1970 is contained in the California Public Resources Code Division 10 and allege that the statute is found in its own manner and form, and deny each and every, all and singular, the allegations therein contained.

88. Answering paragraph 88 of the complaint herein, that State defendants allege that section 21100 of the Public Resources Code is a part of the California Environmental Quality Act of 1970 which is found in its own form and manner, and deny each and every, all and singular, the allegations therein.

89. Answering paragraph 89 of the complaint herein, that State defendants allege that section 21100 of the Public Resources Code is found in its own manner and form, and deny each and every, all and singular, the allegations therein.

90. Answering paragraph 90 of the complaant herein, that State defendants allege that section 21101 of the Public Resources Code is found in its own manner and form, and deny each and every, all and singular, the allegations therein.

91. Answering paragraph 91 of the complaint herein, that State defendants allege that section 21102 of the Public Resources Code is found in its own manner and form, and deny each and every, all and singular, the allegations thereof.

92. Answering paragraph 92 of the complaint herein, that State defendants admit that the Peripheral Canal is a project within the State of California, which will have a significant effect on the environment and deny each and every, all and singular, the remaining allegations therein.

93. Answering paragraph 93 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein.

94. Answering paragraph 94 of the complaint herein, the State defendants deny each and every, all and singular, the allegations therein.

95. Answering paragraph 95 of the complaint herein, that the State defendants allege the powers and duties of the Secretary for Resources and the Director of Water Resources are prescribed by statutes found in their own manner and form, and deny each and every, all and singular, the allegations therein.

96. Answering paragraph 96 of the complaint herein, that State defendants deny each and every, all and singular, the allegations therein.

97. Answering paragraph 97 of the complaint herein, the State defendants deny each and every, all and singular, the allegations therein.

98. Answering paragraph 98 of the complaint herein, the State defendants deny each and every, all and singular, the allegations therein.

99. Answering paragraph 99 of the complaint herein the State defendants deny each and every, all and singular, the allegations therein.

100. Answering paragraph 100 of the complaint herein, the State defendants deny each and every, all and singular, the allegations therein.

101. Answering paragraph 101 of the complaint herein, the State defendants deny each and every, all and singular, the allegations therein.

PRAYER

WHEREFORE, State defendants, State of California, Norman B. Livermore, Jr., as Secretary for Resources of the State of California, and John R. Teerink, as Director of Water Resources of the State of California, sued herein as Director of the Department of Water Resources of the State of California, and each of them, pray judgment as follows:

1. That the complaint and the cause, and each of them herein, be dismissed.

2. That State defendants, and each of them, have judgment.

3. That declaratory relief be denied.

4. That injunction be denied.

5. That plaintiffs take nothing.

6. For costs, disbursements, and expenses.

7. For attorneys' fees.

8. For such other and further relief as may be meet in the premises.

Dated: June 5, 1974

EVELLE J. YOUNGER
Attorney General
CARL BORONKAY
Assistant Attorney General

BERTRAM G. BUZZINI
Deputy Attorney General
Attorney for State Defendants

[Statement of Service omitted]

FEDERAL DEFENDANTS' ANSWER

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Case caption omitted]

ANSWER OF UNITED STATES DEFENDANTS

Come now the United States defendants, Rogers C.B. Morton, as Secretary of the Interior of the United States; Ellis L. Armstrong, as Commissioner of the United States Bureau of Reclamation; Stanley R. Resor, as Secretary of the Army of the United States; Frederick B. Clarke, as Chief of Engineers of the Corps of Engineers of the United States Army; Brigadier General Frank A. Camm, as Division Engineer of the South Pacific Division of the Corps of Engineers; by James L. Browning, Jr. United States Attorney, and Francis B. Boone, Assistant United States Attorney, and for their answer and defenses to plaintiffs' Complaint herein admit, deny, allege, and state as follows:

SECOND DEFENSE

This is a suit against the United States to which it has not consented, and therefore the Court lacks jurisdiction over the person, the United States officers named herein as defendants.

THIRD DEFENSE

The Court lacks jurisdiction over the subject matter in the Complaint.

FOURTH DEFENSE

The Complaint does not state a cause of action under the United States Constitution or any Federal statutes or acts of Congress.

FIFTH DEFENSE

The plaintiffs lack the standing to sue.

SIXTH DEFENSE

1. The allegations in paragraph 1 of the Complaint are conclusions of law which require no answer, other than as stated in the foregoing defenses.

2. The defendants admit the allegation in paragraph 2 of the Complaint that the Sierra Club is a non-profit California corporation. The defendants deny the allegation that the Sierra Club and its members are adversely affected and aggrieved by the acts complained of in the Complaint. The defendants allege that they are without information or belief sufficient to enable them to answer the remaining allegations in paragraph 2 of the Complaint, and therefore on that ground deny each and every such allegation.

3. The defendants allege that they are without information or belief sufficient to enable them to answer the allegations contained in paragraph 3 of the Complaint, and therefore on that ground deny each and every such allegation.

4. The defendants allege that they are without information or belief sufficient to enable them to answer the allegations contained in paragraph 4, and therefore on that ground deny each and every such allegation.

5. The defendants allege that they are without information or belief sufficient to enable them to answer the allegations contained in paragraph 5 of the Complaint, and therefore on that ground deny each and every such allegation.

6. The defendants allege that they are without information or belief sufficient to enable them to answer the allegations contained in paragraph 6 of the Complaint and therefore on that ground deny each and every such allegation.

7. The defendants admit the allegations contained in paragraph 7 of the Complaint.

8. The defendants admit the allegations contained in paragraph 8 of the Complaint.

9. The defendants admit that Stanley R. Resor was the Secretary of the Army of the United States at the time of the institution of this action; however, the present Secretary of the Army is Robert F. Froehlke.

10. The defendants admit the allegations contained in paragraph 10 of the Complaint.

11. The defendants admit the allegations contained in paragraph 11 of the Complaint.

12. The allegations contained in paragraph 12 of the Complaint do not pertain to the defendants herein. Therefore, the defendants neither admit nor deny same, since they apply to the State of California defendants only.

13. The allegations contained in paragraph 13 of the Complaint do not apply to the defendants herein. Therefore, the defendants neither admit nor deny same, since they apply to the State of California defendants only.

14. With respect to the allegations contained in paragraph 14 of the Complaint, the plaintiffs merely set forth the relief which they allegedly are seeking from this Court. Therefore, the allegations require no answer and the defendants neither admit nor deny same. However, defendants do deny that the United States Bureau of Reclamation has in any way proceeded or will in the future proceed in any activity described in paragraph 14 without having complied with the laws and statutes of the United States.

15. The plaintiffs' allegations in paragraph 15 of the Complaint relate to the purpose of the action as described by the plaintiffs. The defendants neither admit nor deny the purpose of the action as alleged by the plaintiff. However, the defendants deny that the defendants have or will cause excessive diversions of water from the Sacramento and San Joaquin Rivers and the defendants further deny that there will be permanent and irreparable damage to fisheries, public health, and recreation caused by any diversions of water by the defendants.

16. The defendants admit the allegations contained in paragraph 16 of the Complaint.

17. The defendants admit the allegations contained in paragraph 17 of the Complaint.

18. The defendants admit the allegations contained in paragraph 18 of the Complaint.

19. The defendants deny the allegation contained in paragraph 19 of the Complaint that the water quality of San Francisco Bay is critically dependent upon continued discharge of fresh water from the Delta to provide flushing and circulation necessary to reduce salinity content, phosphate concentration, and pollution of the waters of San Francisco Bay. The

defendants admit the remaining allegations contained in paragraph 19 of the Complaint.

20. The defendants admit that the Secretary of the Interior is charged with the responsibility for preserving, conserving, and protecting the fish and wildlife and other natural resources of the United States. The defendants deny each and every other allegation contained in paragraph 20 of the Complaint.

21. Answering paragraph 21 of the Complaint, the defendants deny that the State Water Project is financed in large part by Federal funds or that the State's portion of the joint use facilities constitute integral parts of the Central Valley Project of the United States Bureau of Reclamation. The defendants neither admit nor deny the remaining allegations in paragraph 21 of the Complaint, since they apply to the State of California defendants.

22. The defendants neither admit nor deny the allegations contained in paragraph 22 of the Complaint, since they apply to the State of California defendants.

23. The defendants deny that the Delta Pumping Plant has been financed in part with money contributed by the Federal Government and is being constructed with the assistance of and in cooperation with the United States Bureau of Reclamation, as alleged in paragraph 23 of the Complaint. The defendants neither admit nor deny the remaining allegations in paragraph 23 of the Complaint, since they apply to the State of California defendants.

24. The defendants deny that the Tracy Pumping Plant is located on a body of water known as Clifton Court Forebay. Defendants further deny that the Bureau of Reclamation took any part in excavating and building dikes around the periphery of an area of land within the Delta formerly known as Clifton Court Tract. The defendants neither admit nor deny the other allegation in paragraph 24 of the Complaint, since it applies to the State of California defendants.

25. The defendants admit the allegations contained in paragraph 25 of the Complaint.

26. In answering the allegations contained in paragraph 26 of the Complaint, the defendants allege that the use and purpose of the Tracy Pumping Plant is not correctly described in said paragraph 26. The Plant is located in the southern Delta and diverts water from Old River, one of the channels of the Delta. The water diverted is a mixture of waters from both Sacramento and San Joaquin River Basins. The defendants admit that water is transmitted from the Tracy Pumping Plant through the Delta-Mendota Canal to various locations in the Central Valley of California.

27. In answering paragraph 27 of the Complaint the defendants allege that the annual diversion of water at the Tracy Pumping Plant varies from year to year. Defendants do not, however, deny the substance of paragraph 27 in the Complaint.

28. In response to the allegations contained in paragraph 28 of the Complaint the defendants allege that the Bureau of Reclamation proposes to finance, construct, and operate the so-called "Peripheral Canal" only upon proper authorization by the Congress of the United States and upon appropriation of funds therefor from the said Congress of the United States. Since Congress has not authorized construction of the Peripheral Canal as a Federal facility and has not appropriated money for the construction and operation thereof, the allegations contained in paragraph 28 of the Complaint are denied as to the Bureau of Reclamation proposing to finance, construct, and operate the Canal at this time.

29. In answering paragraph 29 of the Complaint the defendants admit that one of the purposes and functions of the Peripheral Canal is to transport fresh water to the Delta and Tracy Pumping Plants from the Sacramento River. Defendants further allege that the proposed Peripheral Canal would have many other important purposes, such as salinity control in the

Delta, maintenance of water quality, protection and preservation and enhancement of fish and wildlife and recreational environment, to name a few. The defendants deny each and every remaining allegation of said paragraph 29 of the Complaint.

30. The defendants deny that the Bureau of Reclamation proposes to commence excavation for the Peripheral Canal in the near future. Defendants allege that the Bureau of Reclamation will not take part in the construction of the Peripheral Canal until Congressional authorization therefor. Defendants deny that the Department of the Interior has submitted to Congress a recommendation that the Federal Government participate in the financing and construction of the Peripheral Canal. Defendants are without information or belief sufficient to enable them to answer the remaining allegations in paragraph 30, and therefore on that ground deny each and every such allegation.

31. In answering paragraph 31 the defendants deny that construction is about to commence on the East Side Canal. Defendants further allege that such construction by the Bureau of Reclamation will not be undertaken until and unless Congressional authorization is received for the Project. Defendants further deny that the Bureau of Reclamation proposes to divert two and one-half million acre-feet (or any amount) of water annually from the Sacramento and San Joaquin Rivers and their tributaries by means of a proposed canal known as the East Side Canal, reservoirs, pumping plants, and other related facilities collectively referred to as the East Side Canal without prior Congressional authorization and appropriations therefor.

32. The defendants admit that the Bureau of Reclamation has commenced construction of a facility known as the "San Luis Drain" for the purpose of collecting water drained from agricultural lands in the San Joaquin Valley as said project was authorized by Public Law 86-488, approved July 3, 1960. The defendants deny the allegations in paragraph 32 of the Complaint not herein specifically admitted.

33. The defendants deny each and every allegation contained in paragraph 33 of the Complaint.

34. The defendants deny each and every allegation contained in paragraph 34.

35. The defendants deny each and every allegation in paragraph 35 of the Complaint.

36. Defendants deny that diversions of water proposed by the Bureau of Reclamation will increase salinity of the Sacramento River and Delta so as to alter and adversely affect marine life and the habitat of migratory birds in said waters and in wetlands, marshes, and other adjacent areas.

37. The defendants deny each and every allegation contained in paragraph 37 of the Complaint.

38. The defendants deny each and every allegation contained in paragraph 38 of the Complaint.

39. In answering paragraph 39 of the Complaint the defendants here refer to and incorporate herein as if fully set forth at length paragraphs 1 through 38 of this Answer.

40. In answering paragraph 40 of the Complaint the defendants herein allege that the construction and operation of the Tracy Pumping Plant and the construction of the San Luis Drain have been authorized by Congress and funds for the construction have been lawfully appropriated for the purposes for which they were used. Construction of the Peripheral Canal and the East Side Project will not be undertaken until lawfully authorized by Congress and until all requirements for such authorization and appropriation for construction have been made. Therefore, the defendants deny each and every allegation contained in paragraph 40 of the Complaint relating to a Federal Peripheral Canal, the Tracy Pumping Plant, the San Luis Drain, and the East Side Canal.

41. The defendants admit the allegations contained in paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in paragraph 42 of the Complaint.

43. In answering paragraph 43 of the Complaint the defendants deny that the operation of the facilities described in said paragraph would cause or result in the diversion of water from or the discharge of water into navigable water of the United States, which diversion and discharge are unlawful in the absence of the approval of the Secretary of the Army and the Chief of Engineers required by the Rivers and Harbors Act of 1899. Defendants admit the remaining allegations in paragraph 43 of the Complaint.

44. Defendants deny each and every allegation contained in paragraph 44 of the Complaint.

45. Defendants deny each and every allegation in paragraph 45 of the Complaint.

46. Defendants deny each and every allegation contained in paragraph 46 of the Complaint.

47. In answering paragraph 47 of the Complaint the defendants deny that the construction or operation of the Peripheral Canal, Delta Pumping Plant, San Luis Drain, East Side Canal, and Tracy Pumping Plant are unlawful pursuant to Section 403 of the Rivers and Harbors Act of 1899 for any reason. Defendants further deny that these projects result in the continuing and substantial destructive alteration of the Delta and the San Francisco Bay environment and that the operation of the facilities is in violation of the statutory jurisdiction and authority of the State of California and the Bureau of Reclamation. Defendants further deny that the operation is detrimental to the rights and interests of the plaintiffs. Further, the defendants deny that the operation of the Tracy Pumping Plant and the Delta Pumping Plant has caused direct damage to fish and wildlife and recreational capacity of the Delta region. The defendants admit the remaining allegations in paragraph 47 of the Complaint.

48. The defendants admit that Congress has not approved the diversion of water from and discharge of water into navigable waters of the United States, the alteration and modification of the course, location, condition, and capacity of said waters, or the obstruction to the navigable capacity of said waters which may be caused by or result from the construction or operation of the Peripheral Canal or the East Side Canal. The defendants deny the allegation that Congress has not approved the diversion of water from and the discharge of water into navigable waters of the United States; the alteration and modification of the course, location, condition, and capacity of said waters; or the obstruction to the navigable capacity of said waters which may be caused by or result from the construction or operation of the Tracy Pumping Plant and the San Luis Drain.

49. The defendants admit the allegations contained in paragraph 49 of the Complaint.

50. In answering paragraph 50 of the Complaint, the defendants refer to and incorporate herein as if fully set forth at length the paragraphs 1 through 49 of this Answer.

51. The defendants admit that the quotation contained in paragraph 51 of the Complaint is a correct quotation of Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407.

52. The defendants deny each and every allegation contained in paragraph 52 of the Complaint.

53. In answering paragraph 53 of the Complaint the defendants refer to and incorporate herein as if fully set forth paragraphs 1 through 52 of this Answer.

53. In answering paragraph 53 of the Complaint the defendants refer to and incorporate herein as if fully set forth paragraphs 1 through 52 of this Answer.

54. The defendants deny the allegations contained in paragraph 54 of the Complaint.

55. The defendants admit that the operation of the Tracy Pumping Plant and the Delta Pumping Plant constitute or result in the diversion of waters from the Sacramento or San Joaquin Rivers. The defendants further admit that if and when authorized and constructed the East Side Canal and the Peripheral Canal will result in diversion of water from the Sacramento or San Joaquin Rivers. Defendants further admit that the State of California and the United States of America propose to divert in excess of seven million acre-feet of water per year from the Sacramento-San Joaquin Rivers and Delta area and their tributaries upon ultimate development. Defendants deny the remaining allegations contained in paragraph 55 of the Complaint.

56. Defendants deny each and every allegation contained in paragraph 56 of the Complaint.

57. In answering paragraph 57 of the Complaint the defendants admit that this may be a correct description of Section 2(b) of the Fish and Wildlife Coordination Act, 16 U.S.C. § 662(b), but allege that the best evidence is the quotation of the section itself.

58. The defendants deny the allegations contained in Section 58 of the Complaint.

59. The defendants admit that the quotation from Section 2(b) of the Fish and Wildlife Coordination Act contained in paragraph 59 of the Complaint may be an accurate partial quote.

60. The defendants deny the allegations contained in paragraph 60 of the Complaint.

61. The defendants deny the allegations contained in paragraph 61 of the Complaint.

62. The defendants deny the allegations contained in paragraph 62 of the Complaint.

63. The defendants deny the allegations contained in paragraph 63 of the Complaint.

64. In answering paragraph 64 of the Complaint the defendants refer to and incorporate herein as if fully set forth at length paragraphs 1 through 63 of this Answer.

65. The defendants admit the allegations contained in paragraph 65 of the Complaint may be a correct description of the section referred to, but allege that the best evidence is the exact quotation of the section itself.

66. The defendants admit the allegations contained in paragraph 66 of the Complaint may be correct description of the section referred to, but allege that the best evidence is the exact quotation of the section itself.

67. The defendants admit the allegations contained in paragraph 67 of the Complaint may be a correct description of the section referred to, but allege that the best evidence is the exact quotation of the section itself.

68. The defendants deny each and every allegation contained in paragraph 68 of the Complaint.

69. In answering paragraph 69 of the Complaint the defendants allege, as set forth elsewhere in this Answer, the Congress of the United States has not authorized construction of the Peripheral Canal or the East Side Canal. Reports on feasibility of the Peripheral Canal and the East Side Canal have not been submitted to Congress for consideration. When they are submitted they will contain an environmental statement and all other required statements and reports. An environmental statement on the San Luis Drain is being processed as required by administrative procedures and will be filed with the President's Council on Environmental Quality when the administrative requirements have been complied with.

70. The defendants admit the allegations contained in paragraph 70 of the Complaint; however, defendants specifically deny the legal necessity of submitting a detailed statement with respect to the environmental impact, the adverse environmental effects, or the irreversible or irretrievable commitments of resources insofar as the Tracy Pumping Plant is

concerned. The Tracy Pumping Plant has been in operation since June 1971. The defendants allege and aver that the National Environmental Policy of 1969 does not require or call for retroactive effect. With respect to the San Luis Drain, an environmental statement on the San Luis Drain is being processed and will be filed with the President's Council on Environmental Quality.

71. With respect to allegation No. 71 in the Complaint, the defendants refer to and incorporate herein as if fully set forth at length paragraphs 1 through 70 of this Answer.

72. The defendants admit the allegations contained in paragraph 72 of the Complaint may be a correct description of the sections referred to, but allege that the best evidence is the exact quotation of the sections themselves.

73. The defendants admit the allegations contained in paragraph 73 of the Complaint.

74. The defendants admit the allegations contained in paragraph 74 of the Complaint.

75. The defendants deny the allegations contained in paragraph 75 of the Complaint.

76. The defendants admit the allegations contained in paragraph 76 of the Complaint, except that the citation is inaccurate; 33 U.S.C.§§1151, et seq.

77. The defendants admit that the quotation contained in paragraph 77 of the Complaint is an accurate excerpt from Section 1171(a) of the Federal Water Pollution Control Act.

78. The defendants admit that the statement in paragraph 78 of the Complaint is an accurate excerpt from Executive Order 11507, 35 Federal Register 2573 (1970).

79. The defendants deny the allegations contained in paragraph 79 of the Complaint.

80. The defendants deny the allegations contained in paragraph 80 of the Complaint.

81. The defendants admit the allegations contained in paragraph 81 of the Complaint, except that defendants allege that Robert F. Froehlke is the Secretary of the Army.

82. The defendants admit the allegations contained in paragraph 82 of the Complaint.

83. In answering paragraph 83 the defendants deny that they can authorize or approve the construction or operation of the Peripheral Canal, Delta Pumping Plant, Tracy Pumping Plant, East Side Canal, or San Luis Drain since only Congress may authorize, approve, and appropriate funds for the construction of a Federal project. The defendants admit that in recommending construction of the Peripheral Canal and the East Side Canal they must comply with all applicable Federal Regulations and statutes.

84. The defendants deny the allegations contained in paragraph 84 of the Complaint.

85. The defendants deny the allegations contained in paragraph 85 of the Complaint.

86. In answering paragraph 86 of the Complaint the defendants deny that there is a present controversy between the plaintiffs and the defendants. The United States defendants admit that they propose to proceed with the operation of the Tracy Pumping Plant. The United States defendants deny that they propose to construct the Peripheral Canal and the East Side Canal without first obtaining the consent of Congress. The United States defendants deny that if the Congress of the United States authorizes the construction of the Peripheral Canal and the East Side projects that the Secretary of the Army and the Chief of Engineers must furnish approval for such projects.

87. The defendants deny the allegations contained in paragraph 87 of the Complaint.

88. The defendants deny the allegations contained in paragraph 88 of the Complaint.

WHEREFORE, the defendants pray this Court enter judgment dismissing the Complaint, denying the declaratory relief, denying the injunctive relief, and awarding costs to the defendants.

Dated: December 6, 1971.

JAMES L. BROWNING, JR.
United States Attorney

FRANCIS B. BOONE

Francis B. Boone
Assistant United States Attorney

Attorneys for United States Defendants.

[Statement of Service omitted]

DECISIONS OF COURT OF APPEALS AND DISTRICT COURT

[The decision of the U.S. Court of Appeal is reprinted as an Appendix to the Petition for Writ of Certiorari filed by State of California *et al.* in No. 79-1252, at pages 2-65 thereof. The decision of the district court is reprinted as a Supplemental Appendix to the petition for Writ of Certiorari filed by State of California *et al.* in No. 29-1252, at pages 1-69 thereof.]

PRE-TRIAL ORDER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

[Case caption omitted]

AGREED PRE-TRIAL ORDER RESPECTING THE FIRST PHASE OF BIFURCATED TRIAL

A pre-trial conference in this matter was held on June 10, 1974, before United States District Judge Charles B. Renfrew. All parties were present by their counsel. This order, having been prepared with the assistance of United States Magistrate Owen E. Woodruff, Jr. pursuant to a prior order of the Court and having been submitted by the parties as their proposed agreed pre-trial order respecting the first phase of this bifurcated trial and all parties having consented to its entry, is adopted, pursuant to Local Rules 104 through 107, as the Pre-Trial Order in this action.

* * * *

3. *Undisputed Facts*

All parties have stipulated that the following facts are true and correct (for ease of reference, the letter designating each exhibit is set forth in the margin opposite the first reference such exhibit).

3.1 Plaintiff Sierra Club is a non-profit California corporation and from 1892 to the present has maintained its principal office in San Francisco, California.

3.2 The Sierra Club has in excess of 130,000 members of whom more than 40,000 live in the San Francisco Bay and the Sacramento-San Joaquin Delta (the Delta) areas.

3.3 The stated purposes of the Sierra Club include the preservation and conservation of the natural resources, fish and wildlife of the United States, including its rivers, bays, wetlands, delta and estuarine areas. Included in the membership of the Sierra Club are many persons who use the waters referred to in the complaint for recreational purposes, including but not limited to boating, fishing and swimming.

3.4 The Sierra Club has brought this action in behalf of its members, as well as in its own behalf, and will adequately represent the interests of such persons.

3.5 Plaintiff Friends of the Earth is a non-profit corporation organized and operating under the laws of the State of New York, with a principal place of business in San Francisco, California. Its stated purposes include the preservation, restoration and rational use of the environment.

3.6 Plaintiff Hank Schramm is and has been engaged for the past 20 years in the business of commercial fishing and the operation of sports-fishing party boats in the waters of San Francisco Bay and of the Pacific Ocean in the region of San Francisco. Hank Schramm has an economic interest and depends for his livelihood on the maintenance, preservation and conservation of sports and commercial fisheries in San Francisco Bay and in the adjoining waters of the Pacific Ocean.

3.7 Plaintiff William Dixon is a lifelong resident of the San Francisco Bay Area and owns substantial property in the Delta, including a partnership interest in the St. Germain Duck Club on Simmons Island. William Dixon has an economic interest in the maintenance, preservation and conservation of adequate non-polluted supplies of water in the Delta and San Francisco Bay regions.

3.8 Defendant Rogers C. B. Morton is the Secretary of the Interior of the United States and is responsible for the administration of the United States Department of the Interior.

3.9 Defendant Gilbert G. Stamm is the Commissioner of the Bureau of Reclamation of the United States Department of the Interior.

3.10 Defendant Howard H. Calloway is the Secretary of the Army of the United States.

3.11 Defendant William C. Gribble, Jr. is the Chief of Engineers of the United States Army and the Administrator of the United States Corps of Engineers.

3.12 Defendant George B. Fink is the Division Engineer of the South Pacific Division of the United States Army Corps of Engineers and maintains his office in the City and County of San Francisco, State of California. Included within the geographic boundaries of the South Pacific Division of the Corps of Engineers are the Sacramento River, the Sacramento-San Joaquin Delta, San Francisco Bay and adjoining waters of the Pacific Ocean.

3.13 Defendant Colonel Frederick J. Rockwell, U.S.A., is District Engineer of the Sacramento, California District of the U.S. Army Corps of Engineers.

3.14 Defendant Colonel James L. Lammie, U.S.A., is District Engineer for the San Francisco, California District of the United States Corps of Engineers.

3.15 Defendant Norman B. Livermore, Jr. is the Secretary for Resources of the State of California in which capacity he supervises the operations of the Resources Agency of the State of California.

3.16 Defendant John R. Teerink is the Director of the Department of Water Resources, which is a department within the Resources Agency of the State of California.

3.17 The Sacramento and San Joaquin Rivers and their tributaries combine to drain most of the Central Valley of California, which comprises about 37% of the total land area of the State of California.

3.18 The Sacramento-San Joaquin Delta contains approximately 700 miles of meandering waterways some of which are navigable. Approximately 35% of California warm water and anadramous sport fishing and about 80% of the commercial salmon fishing of California are dependent upon the Delta environment. As used herein, the Sacramento-San Joaquin River Delta ("Delta") shall include all lands within those boundaries set forth in California Water Code §12220 and depicted on State Defendants' Exhibit A.

3.19 The Delta and the marshes and wetlands adjoining the Delta and downstream waters including Suisun Marsh, are a wintering area and a major and customary natural habitat for migratory birds on the Pacific Flyway.

3.20 More than 4,000,000 people reside in the metropolitan San Francisco Bay Area, some of them use and depend in one way or another upon the water of San Francisco Bay for recreation, commerce or aesthetic enjoyment.

3.21 The Legislature of the State of California has authorized the "State Water Project." In 1959 the California Legislature adopted the Burns-Porter Act to provide funds for the project, which would consist of a system of dams, canals, pumping plants and other facilities designed to, among other things, transfer water across the Delta, provide for water conservation and flood and salinity control in the Delta, provide for the generation of power and divert and transfer water from points at or near the Delta to the San Francisco Bay Area, the San Joaquin Valley, the Central Coast and Southern California. The Burns-Porter Act was submitted to and approved by the voters of the State of California on November 8, 1960.

3.22 The following facilities are "joint use facilities" which are used by and for the benefit of both State and Federal projects: the San Luis Dam and Reservoir; the San Luis Forebay (O'Neil Forebay), related dam, and related waste-way; the San Luis Pumping-Generating Plant; the San Luis Canal (California Acqueduct), but not including water service turnouts and check structures and other appurtenances specifically associated with such turnouts; flood retention basins, floodways, outlet channels, wasteways, equalizing reservoirs, check structures, and other structures as necessary for the proper operation and maintenance of the San Luis Canal; the Mile 18 Pumping Plant (Dos Amigos Pumping Plant); and switchyard and related electrical facilities at the San Luis Pumping-Generating Plant and the Mile 18 Pumping Plant, including any necessary transmission facilities between such plants.

3.23 The State of California, through its Resources Agency and Department of Water Resources, has entered into contracts respecting the delivery by it of electrical power and 4.23 million acre feet of water annually by means of the State Water Project. It is contemplated by the State of California and its Department of Water Resources that approximately 4.1 million acre-feet of this water would be transmitted through the Delta Pumping Plant. The primary purchasers of water are the Kern County Water Agency, which has agreed to purchase 1,153,400 acre-feet annually, and the Metropolitan Water District of Southern California, which has entered into contracts for 2,011,500 acre-feet per year. A list of the 31 contractors for water together with the dates and amounts to be delivered is set forth in State Defendants' Exhibit U.

3.24 The State Water Project provides that substantially all of the water required annually by said project will be obtained initially from the Sacramento River and San Joaquin River and their tributaries. Among the facilities completed or partially constructed for this purpose are the Oroville Dam, with a storage capacity of 3,500,000 acre-feet, on the Feather River,

the Delta Pumping Plant which is adjacent to the Delta, and the Clifton-Court Forebay, which is located in the Delta. The location, configuration, and plan of the Delta Pumping Plant including its appurtenant facilities and the Clifton-Court Forebay which, among other things, provide for the diversion of water from the Delta, are accurately depicted in State Defendants Exhibits L through Q.

3.25 The Delta Pumping Plant is located near an artificially created body of water known as Clifton Court Forebay which was created by the California Department of Water Resources by excavating and building dikes inside the existing levees of an area of dry land within the Delta previously known as the Clifton Court Tract. The Clifton Court Forebay became operational in November 1969.

3.26 The United States Bureau of Reclamation is constructing and administers the construction and operation of the Central Valley Project, which consists of a series of reservoirs, pumping plants, canals and other facilities for the purpose of controlling the flow of water in the Sacramento River, San Joaquin River, certain of their tributaries, and the Trinity River, generating hydro-electric power, providing flood control and providing water for irrigation and other uses in the Central Valley of California.

3.27 Included in the facilities of the Central Valley Project is the Tracy Pumping Plant, located on an inlet channel of Old River which is a part of the Delta. One purpose of the Tracy Pumping Plant is to divert water from the Delta by means of pumping into the Delta-Mendota Canal, a 115-mile canal which leads to the Mendota Pool in the Central Valley of California. The location, configuration and plan of the Tracy Pumping Plant and its appurtenant facilities, including those which provide for the diversion of water from the Delta, are accurately depicted in Federal Defendants' Exhibit B.

3.28 The amounts of water (in acre feet) pumped and diverted by the Tracy Pumping Plant during the calendar years 1964 through 1973 are set forth below:

Year	Quantity
1964	1,659,768
1965	1,440,058
1966	1,649,866
1967	1,248,886
1968	2,252,942
1969	1,528,369
1970	1,685,341
1971	2,196,692
1972	2,119,053
1973	2,127,341

3.29 The amounts of water (in acre-feet) pumped and diverted by the Delta Pumping Plant during the calendar years 1967 (the first year of operation) through 1973 are set forth below;

Years	Quantity
1967	21,424
1968	910,061
1969	673,925
1970	544,552
1971	763,621
1972	1,530,666
1973	1,262,120

3.30 Set forth below is a listing of each of the contracts entered into by the State of California for the construction of the Clifton Court Forebay and the Delta Pumping Plant, their appurtenant structures, or any portions or parts thereof together with the dates of said contracts and description of the work performed pursuant to each.

Spec. No.	Description of Work Performed	Began Work	Completed Work
63-22	Intake Channel Sta. 85+00 to 174+40	7/63	10/64
64-09	Delta Pumping Plant & Discharge Lines	8/64	8/66
64-10	Seven Vertical Centrifugal Pumps for Delta Pumping Plant	8/64	6/68
64-48	Five 84-inch and Two 54-inch Pump Discharge Valves for Delta Pumping Plant	5/65	11/69
65-07	Intake Channel Sta. 0+00 to 85+00	5/65	4/67
65-12	Furnish & Install Motors Delta Pumping Plant	5/65	4/69
66-02	Completion Delta Pumping Plant	2/66	2/69
66-06	Fish Protective Facility	5/66	8/68
66-40	Pumping Units-Fish Protective Facility	11/66	6/68
67-45	Clifton Court Forebay	12/67	12/69
67-62	Intake Channel Modifications	10/67	12/67
68-08	Acoustic Velocity Meters in West Canal and Old River	5/68	1/71

3.31 The initial contract for construction of the Tracy Pumping Plant and Intake Channel was dated June 23, 1947. The initial contract for construction of the Delta-Mendota Canal was dated June 14, 1946. Construction of the Tracy Pumping Plant was completed prior to February 1, 1953, on which date it was transferred from the Construction Branch of the Bureau of Reclamation to the Operation and Maintenance Branch. Construction of the Delta-Mendota Canal was completed prior to July 1, 1952, on which date it was transferred from the Construction Branch of the Bureau of Reclamation to the Operation and Maintenance Branch. The initial contract for the construction of the Tracy Fish Facilities was October 27, 1955, and the Facilities were constructed prior to January 1, 1958, the date on which they were transferred to the Operation and Maintenance Branch of the Bureau of Reclamation.

3.32 The State of California proposes to finance, construct and operate a canal approximately 42 miles in length from a point on the Sacramento River near Hood, California, to a point in the delta adjacent to the Tracy Pumping Plant and Delta Pumping Plant. This canal is known as and is referred to herein as the "Peripheral Canal."

3.33 The proposed location, plan and configuration of the Peripheral Canal and its appurtenant facilities are accurately depicted in State Defendants' Exhibits V and W.

3.34 The Peripheral Canal is being designed to transport sufficient quantities of water to both the Delta Pumping Plant and the Tracy Pumping Plant as will satisfy present and future requirements for water to be provided by the State Water Project and Central Valley Project through the California Aqueduct and Delta Mendota Canal, respectively. The Peripheral Canal is also being designed to transport sufficient water to provide water quality control, improve fish and wildlife and recreation potentials in the Delta.

3.35 One of the proposed purposes and functions of the Peripheral Canal is to transport fresh water to the Delta Pumping Plant and Tracy Pumping Plant from a point on the Sacramento River upstream from both the point of salt water intrusion and the point where the poorer quality waters of the San Joaquin River join the Sacramento River thereby insuring that saline or poorer quality water from the Delta does not enter the pumps of the Tracy Pumping Plant or the Delta Pumping Plant. An equally important purpose and function of the Peripheral Canal is to release part of this fresh water through structures along its route into Delta Channels to insure water quality control throughout the Delta for agricultural, fish and wildlife enhancement and other environmental purposes.

3.36 The State of California has expended the following amounts on the Peripheral Canal through 1973:

Year	Planning and Development	Right of Way Acquisition	Right of Way Land Costs
Through 1965	$ 539,726.07		
1966	907,788.14	$ 51,197.62	
1967	970,786.44	51,698.09	
1968	920,029.20	49,731.91	$ 40,918.21
1969	747,939.48	63,061.04	125,707.21
1970	548,081.71	7,954.53	929,010.90
1971	549,435.76	1,715.12	461,251.35
1972	563,713.50	2,230.10	251,343.18
1973	879,656.60	47,904.97	193,492.12
Total Costs	$6,627,156.90	$ 275,493.38	$2,001,722.97
TOTAL OVERALL COST		$8,904,373.25	

3.37 The United States Bureau of Reclamation has directly expended through March 31, 1974 the sum of $751,594.21 in the planning of the Peripheral Canal not including funds allocated for Delta Support Studies, Four Agency Studies or Suisun Marsh Studies.

3.38 The operation of the Tracy Pumping Plant has caused a greater flow of San Joaquin River water into Old River toward the Pumping Plant than occurred under pre-Tracy conditions. During summer periods of low flow in the San Joaquin there can be a net reversal in the flow of the San Joaquin River between San Andreas Landing and Old River.

Operation of Tracy Pumping Plant in conjunction with the Delta Cross Channel also draws water from the Sacramento River on the eastern edge of the Delta to the interior Delta and to the export pumps. The Delta Cross Channel is a facility constructed by the U.S. Bureau of Reclamation to facilitate transfer of water across the Delta.

3.39 The operation of the Delta Pumping Plant has caused net flow reversals during some summer months in the San Joaquin River and most of the year in Old and Middle Rivers. Net flow reversals also occurred at times in the Delta before the Delta and Tracy Pumping Plants were built.

3.42 For purposes of this action, it is stipulated that the following constitute nagivable waters of the United States within the meaning of the Rivers and Harbors Act of 1899: the Sacramento River to River Mile 301.6, at Keswick Dam; the San Joaquin River to River Mile 118, at the confluence of the Merced and San Joaquin River; and the Sacramento-San Joaquin River Delta including but not limited to Old River, Middle River, Italian Slough, Whiskey Slough, Beaver Slough, Disappointment Slough, Fourteen Mile Slough, Victoria Canal, North Victoria Canal, North Canal and Woodwood Canal to the plane of the mean higher-high tide. For purposes of this lawsuit it is agreed that the portion of the Delta from which water is drawn by facilities of the Tracy Pumping Plant is "a navigable river or other navigable water of the United States" within the meaning of section 9 of the Rivers and Harbors Act of 1899.

3.43 No impact statement has been filed pursuant to Section 102 of Environmental Policy Act of 1969 with respect to the Delta Pumping Plant, Tracy Pumping Plant or Peripheral Canal.

3.44 The Peripheral Canal is a "project" having a "significant effect on the environment" within the meaning of § 21100 of the California Environmental Quality Act (CEQA), Pub. Res. Code § 21100 (1970), and the preparation of an adequate Environmental Impact Report by the Department of Water Resources on the Peripheral Canal will therefore be required before construction thereon may commence.

3.45 No environmental impact report has been filed pursuant to CEQA with respect to the Delta Pumping Plant, Peripheral Canal or any portions thereof.

3.46 The Tracy Pumping Plant diverts water from the Delta and the Delta Pumping Plant diverts water from Clifton Court Forebay, which diverts water from the Delta.

3.47 The Peripheral Canal, if constructed, would divert waters from the Sacramento River.

3.48 The Peripheral Canal, as presently planned by the State of California, has been designed so as to permit it to divert from the Sacramento River sufficient quantities of water to satisfy the needs of the Tracy Pumping Plant and the Delta Pumping Plant.

3.49 The operation of the Tracy Pumping Plant and the operation of the Delta Pumping Plant each has the effect of reducing the annual amount of water which, in the absence of such operation, would flow into San Francisco Bay. The dams constructed as part of the Central Valley Project and State Water Project, of which the Tracy Pumping Plant and Delta Pumping Plant are features, store potential flood waters in the winter and spring and release these stored waters during dry periods. These storage releases increase the amount of water which, in the absence of such operation, would be available in the summer and fall and during other dry periods.

3.50 The State of California has acquired a portion of the land required for the construction of the Peripheral Canal.

3.52 The facilities for the diversion of water from the Delta to the Tracy Pumping Plant are accurately depicted in Federal Defendants' Exhibit D.

3.53 The intake structure for the diversion of water from the Delta to the Delta Pumping Plant are accurately depicted in State Defendants' Exhibit L through Q.

3.54 San Francisco Bay and the Delta are estuaries.

3.55 The Peripheral Canal would result in the closure, modification or temporary modification of the following Delta channels: Sacramento River; Snodgrass Slough; Lost Slough; Mokelumne River; Beaver Slough and Beaver Canal; Hog Slough; Sycamore Slough and Sycamore Canal; White Slough and White Canal, and outlet into Disappointment Slough; Telephone Cut; Disappointment Slough, Fourteen Mile Slough and Fourteen Mile Canal; San Joaquin River; Whiskey Slough; Middle River Complex; Old River; and West Canal.

3.56 There has been no Congressional action on the Peripheral Canal and the final Peripheral Canal location and plans have not been approved by the Chief of Engineers or the Secretary of the Army.

3.57 With the completion of related State and Federal projects, the rate of export pumping of Sacramento-San Joaquin River Delta waters by the Tracy and Delta Pumping Plants will increase, under current authorization, from the 3.388 million acre-feet pumped in 1973 to approximately 7 million acre-feet in 1990 and approximately 7.75 million acre-feet by 2020.

* * *

Dated: June 10, 1974

CHARLES B. RENFREW
United States District Judge

The above pre-trial order has been prepared with the assistance of the United States Magistrate and all parties, through their respective counsel, have stipulated to its entry as the pre-trial order of the Court with respect to the first phase of the bifurcated trial of this action.

OWEN E. WOODRUFF, JR.
Owen E. Woodruff, Jr.
United States Magistrate

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Case caption omitted]

AFFIDAVIT OF FRANK M. CLINTON IN SUPPORT OF MOTION TO INTERVENE

FRANK M. CLINTON, being first duly sworn, deposes and says:

I am the General Manager of The Metropolitan Water District of Southern California, hereinafter referred to as "Metropolitan". The boundaries of Metropolitan encompass 125 incorporated cities, as well as large unincorporated areas within the six counties of Ventura, Los Angeles, Orange, Riverside, San Bernardino and San Diego, lying within the Southern California coastal plain. Metropolitan has 27 member public agencies, consisting of 14 cities, 12 municipal water districts and one county water authority; covers an area of some 4,900 square miles; and has a population of more than ten million inhabitants.

On November 4, 1960, Metropolitan entered into a contract, hereinafter referred to as "the contract", with the State of California, acting by and through its Department of Water Resources, hereinafter referred to as "the Department", to purchase up to 1,500,000 acre-feet annually of water from the California State Water Project. On September 28, 1964 and August 4, 1965, Metropolitan and the Department amended the contract to increase Metropolitan's maximum annual entitlement to 2,000,000 acre-feet and then to 2,011,500 acre-feet respectively, to offset Metropolitan's prospective loss of Colorado River water occasioned by the United States Supreme Court Decision in *Arizona* v. *California.*

Under the provisions of the contract, Metropolitan is required to pay the Department substantial sums of money, now estimated to total $6.4 billion over the term of the contract, in return for the Department's delivery of the varying annual amounts of State Project water set forth in the contract. As of this date, Metropolitan has already paid to the Department of Water Resources nearly $300 million pursuant to the contract.

On April 14, 1972, the Department began delivering State Project water to Metropolitan under the contract. Metropolitan has needed those water deliveries in order to help meet the continuing water supply needs of the inhabitants within its boundaries. Metropolitan will need increasing amounts of water from the State Water Project to help meet the estimated future water supply needs of Metropolitan's inhabitants; to offset reductions in Metropolitan's Colorado River supplies as the United States Bureau of Reclamation Central Arizona Project begins to utilize a portion of Metropolitan's current Colorado River water supply; to improve the quality of the total water supply within its boundaries; and to permit development of additional waste water reclamation programs by using the lower salinity of State Project water.

In order to distribute the amounts of State Project water set forth in Metropolitan's State water service contract, Metropolitan has undertaken extensive commitments including a $1.3

billion program initiated in 1965 to construct major water facilities needed to distribute to its inhabitants the State Project water which the Department agreed to deliver to Metropolitan under said contract. Metropolitan's electorate, on June 7, 1966, authorized Metropolitan, by a majority of more than 75 per cent of the votes cast, to incur bonded indebtedness in the amount of $850 million to partially fund that program. Metropolitan has to date issued and sold bonds so authorized totaling $485 million, which must be repaid by property taxes or by revenues generated by water sales or both. In addition Metropolitan has expended some $65 million from its current revenues in that program. Thus, Metropolitan has already expended over $550 million in constructing the initial portions of the facilities needed to distribute the water covered by Metropolitan's State water service contract.

On the basis of the information available to me, it is my belief that an injunction preventing the Department from continuing to operate the Delta Pumping Plant or from constructing or operating the Peripheral Canal would prevent the Department from making the deliveries of State Project water to Metropolitan set forth in the contract; that it would cause financial inequities and economic hardship to Metropolitan and to its inhabitants; that it could prevent Metropolitan from fully meeting the future water needs of its member public agencies and their inhabitants; that it would significantly impair Metropolitan's water service revenue base, and require substantial increases in Metropolitan's water and tax rates; that it could increase the cost of Metropolitan's bond financing by adversely affecting Metropolitan's credit rating and could thus increase substantially the cost to Metropolitan and its inhabitants of selling, issuing and paying presently unsold Metropolitan bonds already authorized, and of constructing additional water resource facilities that will be needed in the future to meet the water needs of Metropolitan's inhabitants; and that these effects could also cause substantial dislocations in other areas of the State because of the commercial, financial and cultural ties between those areas and the area within Metropolitan's boundaries.

In 1964, Metropolitan purchased from the State of California Water Bond R-W249 issued under the California Water Resources Development Bond Act, commonly known and referred to as the Burns-Porter Act. Metropolitan still owns that bond which has a $5,000 principal face value and bears interest at the rate of 3.4 per cent per annum payable semi-annually. Under the terms of the bond, the State's obligation to repay principal falls due on September 1, 1990.

On the basis of the information available to me, it is my belief that an injunction preventing the Department from continuing to operate the Delta Pumping Plant or from constructing or operating the Peripheral Canal could drastically reduce the revenues derived by the State from the sale, delivery or use of water from the State Water Project and could thus remove the principal source of funds available to meet bond interest and principal payment obligations; that the loss of those funds could impair the State's ability to meet its water bond payment obligations and would consequently impair and reduce the value of the aforementioned water bond which Metropolitan owns.

FRANK M. CLINTON

Frank M. Clinton

[Notarization omitted]

Subscribed and sworn to before me this 28th day of March, 1974.

AFFIDAVIT (Brent L. Graham)

JAMES G. MCCAIN
Attorney at Law
1107 Norboe Avenue
Corcoran, California 93212
Telephone: (209) 992-2414

Attorney for Intervenor,
Tulare Lake Basin Water Storage District

IN THE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

[Case caption omitted]

AFFIDAVIT OF BRENT L. GRAHAM IN SUPPORT OF MOTION OF TULARE LAKE BASIN WATER STORAGE DISTRICT TO INTERVENE

BRENT L. GRAHAM, being first duly sworn, deposes and says:

I am the Manager of the TULARE LAKE BASIN WATER STORAGE DISTRICT, a public agency of the State of California, hereinafter referred to as "the District".

The District encompasses a total area of 192,409 acres (300 square miles) in the fertile Tulare Lake bed. Almost 98 percent of the District is in Kings County. The remaining 4,000 acres are in Tulare County.

The District entered into a water supply contract with the State of California, Department of Water Resources, December 20, 1963, following approval of the contract at an election December 17, 1963. This contract, with two later amendments, was validated by judgment in the Superior Court in Kings County, dated March 11, 1965.

The maximum annual entitlement of the District under the State Water Supply Contract as amended will be 110,000 acre-feet.

The water from the California Aqueduct is delivered to District laterals near Kettleman City for transmission to the District.

The District is the second largest agricultural contractor for State Water.

For the years 1974 through 1979 the District expects to receive the following amounts of water pursuant to said Water Supply Contract as amended:

Year	Water Deliveries in Acre Feet
1974	192,125
1975	202,600
1976	202,600
1977	202,600
1978	202,600
1979	202,600

Said water supply is being used and will be used for agricultural purposes and is a vital and essential component of the agricultural economy of Kings County.

Plaintiffs seek to enjoin the State of Caliornia, Department of Water Resources, from operating the Delta Pumping Plant until compliance is had thereby with a multitude of conditions.

The Delta Pumping Plant provides the water for the State Water Project.

The District has financed transmission laterals for the State Water Supply through general obligation bonds in a total amount of $1,800,000. The bonds must be repaid through assessments on real property in the District.

Cessation of water deliveries to the District under the State Water Supply Contract would trigger a disruption of the economy in Kings County, a drastic loss in revenue to the area being farmed and consequent reduction in ability to meet bond payments.

On the basis of information available to me, such State Water Supply Contracts are based on factors unique to the areas represented by the contracting districts and only the district involved can make a full and adequate presentation of the problems peculiar to its area.

Dated: April 12, 1974.

BRENT L. GRAHAM

Brent L. Graham

[Notarization omitted]

AFFIDAVIT (Lloyd C. Fowler)

ALBERT THOMAS HENLEY, General Counsel
5750 Almaden Expressway
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926 Jay Building, Room 505
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Telephone: (916) 444-2880

Attorneys for Intervenor,
Santa Clara Valley Water District

IN THE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

[Case caption omitted]

AFFIDAVIT OF LLOYD C. FOWLER IN SUPPORT OF MOTION OF SANTA CLARA VALLEY WATER DISTRICT FOR LEAVE TO INTERVENE

LLOYD C. FOWLER, being first duly sworn, deposes and states as follows:

I am the Chief Engineer of Santa Clara Valley Water District, a local agency of the State of California, duly organized and existing under the Santa Clara Valley Water District Act (and hereinafter referred to as "District"); that said District lies adjacent to and generally southerly of the southern arm of San Francisco Bay, having boundaries coterminous with those of the County of Santa Clara, and embracing approximately 853,500 acres;

I have occupied the position of Chief Engineer of the District for in excess of ten years and I have personal knowledge of the matters and things herein set forth.

1. On November 29, 1961, the District entered into a contract for a water supply with the State of California, Department of Water Resources, providing that the State will deliver to the District 100,000 acre-feet of water per annum, from the South Bay Aqueduct of the State Water Project. Such water is pumped by the State from the Sacramento-San Joaquin Delta at the Delta Pumping Plant, into Bethany Reservoir, thence up into the 44-mile South Bay Aqueduct, for delivery to the District (and to portions of Alameda County en route).

2. In 1962, Zone W-1 was formed within the District's boundaries pursuant to said Santa Clara Valley Water District Act, to comprise the service area for the 100,000 acre-feet of the water under the State Water Supply Contract. Said zone comprises substantially all of the Santa Clara Valley (excepting portions south of Metcalf Road), and includes the Cities of San Jose, Santa Clara, Mountain View, Sunnyvale, Palo Alto, Milpitas, Cupertino, Campbell, Los Altos, Town of Los Altos Hills, Monte Sereno, Saratoga, and the Town of Los Gatos, and in addition, several thousand acres of valuable agricultural lands. Said zone and area is hereinafter referred to merely as the "Santa Clara Valley". Said 100,000 acre-feet comprises about one-third of the total water supply within the Santa Clara Valley, the remaining two-thirds being supplied by pumping from the groundwater basin underlying the Santa Clara Valley, from reservoirs on various streams tributary or adjacent thereto, and from other sources. In 1962, the voters within said Santa Clara Valley authorized the District to issue and sell general obligation bonds in the amount of $42,050,000, for the construction of facilities to treat and distribute said water supply from the State to various points therein. All of said bonds were sold and construction of said facilities was thereafter commenced, and is now substantially completed.

3. Deliveries of State Water Project water from the Delta to the District under said water supply contract commenced in 1965, and currently amount to over 92,000 acre-feet per annum. Approximately one-half of said water is treated and delivered to municipal and utility water systems serving inhabitants within Santa Clara Valley, and approximately one-half of said deliveries are infiltrated into the groundwater basin underlying said Santa Clara Valley for groundwater basin recharge.

4. Prior to the importation of such water within the Santa Clara Valley as aforesaid, the cities and utilities serving the urban areas therein, and the agricultural lands therein, had an inadequate supply for their growing needs, and their combined pumping from the groundwater basin underlying the Santa Clara Valley exceeded the safe yield of the basin, and the basin was being overdrafted, at an estimated rate of about 30,000 acre-feet per annum by said pumping. As a further consequence thereof, destruction of and salt water intrusion into the basin from the San Francisco Bay were threatened and lands within the Santa Clara Valley suffered from ground surface subsidence, amounting, near downtown San Jose, to more than thirteen feet. Such subsidence was a direct consequence of overpumping of groundwater in said Valley. These conditions of inadequate supply, overdraft, salt water intrusion, and subsidence were prevented and relieved by said importation of water from the Sacramento-San Joaquin Delta via the South Bay Aqueduct under said water supply contract.

5. If the water supply to the District under said Water Supply Contract were in any way terminated, suspended or curtailed, even on an interim basis, then the inhabitants within said Santa Clara Valley, numbering more than one-million persons, and the agricultural lands therein, would be confronted with a deficient water supply of serious magnitude, and economic and other hardships would result. Further, the aforesaid condition of overdraft would be restored, and substantial and irreversible environmental damage would result, including but not limited to destruction of or damage to the

groundwater basin and the groundwater supply, salt water intrusion into the basin, and additional ground surface subsidence. These conditions would further result in a permanent energy drain, for the pumping of storm water and sanitary sewage against grade, and in the requirement of the extensive levee system to control floods; and further, a permanent energy drain for higher well lifts.

6. Further, the District and the taxpayers within the Santa Clara Valley are and will be required and obligated to pay interest and principal upon the general obligation bonds issued and sold for the construction of the aforesaid treatment and distribution facilities, which payments amount to approximately $2,500,000 annually, and if there were any interruption, suspension or curtailment of said State Water Supply, those facilities would be wasted and useless.

7. Briefly stated, the economy of Santa Clara Valley, without reference to growth, is based upon a given level of water use, about one-third of which is supplied by a diversion made by the State's Delta Pumping Plant and that the only substitute for such importation is groundwater pumping, the result of which will be economic loss and substantial, permanent environmental damage.

LLOYD C. FOWLER

Lloyd C. Fowler

[Notarization omitted]

AFFIDAVIT (Stuart T. Pyle)

EDWARD J. TIEDEMANN
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Attorneys for Intervenor

IN THE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

[Case caption omitted]

AFFIDAVIT OF STUART T. PYLE IN SUPPORT OF MOTION OF KERN COUNTY WATER AGENCY TO INTERVENE

STUART T. PYLE, being first duly sworn, deposes and says:

I am the Engineer-Manager of the Kern County Water Agency, a public agency of the State of California, hereinafter referred to as "the Agency". The Agency boundaries are coterminous with those of Kern County, California.

On November 15, 1963, the Agency entered into a contract with the State of California, Department of Water Resources, to purchase up to 1,000,C00 acre feet of water annually from the California State Water Project. On September 28, 1964, that contract was amended to increase the Agency's maximum annual entitlement to 1,153,400 acre feet. Such water is diverted from the Sacramento-San Joaquin Delta, through the State's Delta Pumping Plant, into the California Aqueduct for delivering to the Agency.

For the years 1974 through 1979, the Agency expects to receive the following amounts of water pursuant to its contract with the State:

Year	Water Deliveries in Acre Feet
1974	669,805
1975	789,652
1976	902,702
1977	922,437
1978	1,003,387
1979	1,046,037

This water will be used primarily for agricultural purposes. Agriculture is California's leading industry and Kern County ranks third of California counties in agricultural production.

In their complaint plaintiffs have requested the court to enjoin the State of California, Department of Water Resources, from operating the Delta Pumping Plant until it has complied with certain conditions. Any court order curtailing or eliminating the delivery of State Project water to the Agency will cause severe economic hardship and social disruption not only to Kern County, but to many areas of California. The water which the Agency purchases from the State is resold to our agricultural member units for distribution and resale to the farmers. These member units have spent and are spending millions of dollars on construction of distribution systems. Those systems have been financed through bonds and loans which must be repaid by property taxes and from revenues generated by water sales. Enjoining the State of California, Department of Water Resources, from pumping water from the Delta Pumping Plant for delivery to the agency, would eliminate these revenues and could result in repayment delinquencies and tax foreclosures on thousands of acres of agricultural land within Kern County. Cessation of water deliveries by the State would also reduce crop production in Kern County which would be detrimental to the economy and the citizens of Kern County, the State and the nation.

An injunction stopping pumping from the Delta Pumping Plants, in addition to working economic hardship, would quite likely result in the filing of claims and possible relating litigation against the State of California for the failure to deliver water to the Agency and its member units as required by contract.

STUART T. PYLE

Stuart T. Pyle

STATE EXHIBIT 8

Figure 5: LONG-TERM WATER SUPPLY

Location No.	Contracting Agency	Total Deliveries through Dec. 31, 1972 (acre-feet)	Maximum Annual Entitlement (acre-feet)
	UPPER FEATHER AREA		
1	City of Yuba City	0	9,600
2	County of Butte	378	27,500
3	Plumas County Flood Control and Water Conservation District	639	2,700
	Subtotal	1,017	39,800
	NORTH BAY AREA		
4	Napa County Flood Control and Water Conservation District	13,687	25,000
5	Solano County Flood Control and Water Conservation District	0	42,000
	Subtotal	13,687	67,000
	SOUTH BAY AREA		
6	Alameda County Flood Control and Water Conservation District, Zone 7	68,403	46,000
7	Alameda County Wate. District	174,397	42,000
8	Santa Clara County Flood Control and Water District	489,205	100,000
	Subtotal	732,005	188,000
	SAN JOAQUIN VALLEY AREA		
9	County of Kings	6,100	4,000
10	Devil's Den Water District	55,486	12,700
11	Dudley Ridge Water District	181,638	57,700
12	Empire West Side Irrigation District	17,761	3,000
13	Hacienda Water District	24,930	8,500
14	Kern County Water Agency	1,324,215	1,153,400
15	Oak Flat Water District	27,389	5,700
16	Tulare Lake Basin Water Storage District	400,549	110,000
	Subtotal	2,038,068	1,355,000

Location No.	Contracting Agency	Total Deliveries through Dec. 31, 1972 (acre-feet)	Maximum Annual Entitlement (acre-feet)
	CENTRAL COASTAL AREA		
17	San Luis Obispo County Flood Control and Water Conservation District	0	25,000
18	Santa Barbara County Flood control and Water Conservation District	0	57,700
	Subtotal	0	82,700
	SOUTHERN CALIFORNIA AREA		
19	Antelope Valley-East Kern Water Agency	53	138,400
20	Castaic Lake Water Agency	0	41,500
21	Coachella Valley County Water District	0	23,100
22	Crestline-Lake Arrowhead Water Agency	464	5,800
23	Desert Water Agency	0	38,100
24	Littlerock Creek Irrigation District	338	2,300
25	Mojave Water Agency	55	50,800
26	Palmdale Irrigation District	0	17,300
27	San Bernardino Valley Municipal Water District	1,275	102,600
28	San Gabriel Valley Municipal Water District	0	28,800
29	San Gorgonio Pass Water Agency	0	17,300
30	The Metropolitan Water District of Southern California	71,938	2,011,500
31	Ventura County Flood Control District	0	20,000
	Subtotal	74,123	2,497,500
	TOTAL STATE WATER PROJECT	2,858,900(g)	4,230,000
	NET AREA TOTAL, STATE WATER PROJECT	2,858,900	4,230,000
	TOTAL, STATE OF CALIFORNIA		
	PERCENT, STATE WATER PROJECT OF TOTAL		

a) Total for Plumas County, including Last Chance Creek Water District.

b) Total for Kings County, including Dudley Ridge Water District, Empire West Side Irrigation District, Hacienda Water District, most of Tulare Lake Basin Water Storage District, and about 40% of Devil's Den Water District.

c) Total for Kern County, including about 60% of Devil's Den Water District, and about 50% of Antelope Valley-East Kern Water Agency.

d) Total for Antelope Valley-East Kern Water Agency includes California City which was reannexed in June, 1972.

e) Includes duplicate values for overlapping agency areas.

PERMIT NO. 4101
(Clifton Court Levee)
DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized.

PERMIT NO. 4101

Sacramento District
U.S. Army, Corps of Engineers.
650 Capitol Mall,
Sacramento, Calif.
15 June, 1967

State of California
Department of Water Resources
3251 "S" St., P.O. Box 9137
Sacramento, California 95816

Gentlemen:

Referring to written request dated 3 May 1967, I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army to cut the westerly levee, of West Canal, at Clifton Court Tract for Clifton Court Forebay in Contra Costa County, California, in accordance with the plans shown on the drawing

attached hereto marked: "Proposed Levee Cut, Clifton Court Forebay", dated March 1967, subject to the following conditions:

(a) That this work shall be subject to the supervision and approval of the District Engineer, Corps of Engineers, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment the interests of navigation so require.

(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material in the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, New York City.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interest of navigation, all expenses connected therewith shall be borne by the permittee.

(e) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if,in the opinion of the Secretary of the Army, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required upon due notice from the Secretary of the Army, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of the Army may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the United States on account of any such removal or alteration.

(g) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(h) That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the U.S. Coast Guard, shall be installed and maintained by and at the expense of the owner.

(i) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(j) That if the structure or work herein authorized is not completed on or before the 31st day of December, 1970, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

By authority of the Secretary of the Army:

CRAWFORD YOUNG

Crawford Young
Colonel, CE
District Engineer

DEPARTMENT OF THE ARMY
SACRAMENTO DISTRICT, CORPS OF ENGINEERS
650 CAPITAL MALL
SACRAMENTO, CALIFORNIA 95814

IN REPLY REFER TO
SPKKO-N (4101) **12 May 1967**

PUBLIC NOTICE

TO WHOM IT MAY CONCERN:

Application has been made to this office by State of California Department of Water Resources, 3251 S Street, P.O. Box 9137, Sacramento, California 95816, for a Department of the Army permit to cut the westerly levee of West Canal, for the purpose of constructing an inlet control structure for Clifton Court Forebay, Contra Costa County, as shown on the reverse of this notice.

A permit issued by the Department of the Army does not give any property rights either in real estate or material, or any exclusive privileges and does not authorize any injury of private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity of obtaining State assent to the work authorized.

Interested parties are invited to submit in writing, in duplicate, on or before 12 June 1967, any objections they may have to the proposed work. The determination as to whether a permit will be issued must rest primarily upon the effect of the proposed work on navigation. However, other pertinent factors, including fish and wildlife conservation aspects, will be accepted and made part of the record and will be considered in determining whether it would be in the best public interest to grant a permit.

CRAWFORD YOUNG
Colonel, CE
District Engineer

[DIAGRAM OMITTED]

REPORTER'S TRANSCRIPT (partial)

[423] Q. [Mr. Dauber] And you've studied tidal variations in the Delta?

A. [Mr. Herbert] Yes.

Q. What are the tidal variations at—in the Delta at Clifton Court Ferry, which as I understand it is a—is very close to the Tracy Pumping Plant?

A. That's correct.

Oh, the average tidal amplitude is somewhere between three and three and a half feet, from high to low.

THE COURT: And this is Clifton Court Forebay?

THE WITNESS: No. Clifton Court Ferry. It's a station on the Old River near the intake.

* * *

[429] Q. Now, would you define for us what is meant by "reversals of net flow"?

A. Well, it's reversal of an entity net flow, which is the total—or the difference between the total amount of flow upstream minus the total flow downstream during one tidal cycle or any integral number of tidal cycles.

Q. In the Southern Delta, let's say in the Old River, or maybe the San Joaquin River, in the Southern Delta, during a tidal cycle, is there flow in both directions or just in one direction?

A. Normally flow in both directions.

Q. And what's the reason for that?

[430] A. Well, the entire estuary is under the influence of the tidal variation at the Golden Gate.

Q. So it's basically tidal action that causes flow in both directions?

A. Correct.

INTERLOCUTORY ORDER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

[Case caption omitted]

INTERLOCUTORY ORDER GRANTING INJUNCTIVE RELIEF

The above captioned action came regularly for trial in the United States District Court for the Northern District of California, before the Honorable Charles B. Renfrew, U.S. District Judge, on June 10, 1974. Evidentiary hearings in Phase One of the bifurcated trial were concluded on June 21, 1974, and argument was entertained by the Court on July 26, 1974.

Plaintiffs Sierra Club, Friends of the Earth and Hank Schramm were represented by John B. Clark, Esq., Robert B. Thum, Esq., and Michael R. Sherwood, Esq. Plaintiff William Dixon was represented by Gary J. Near, Esq. The defendants Rogers C. B. Morton, Gilbert G. Stamm, Howard H. Callaway, William C. Gribble, Jr., George B. Fink, Frederick J. Rockwell, and James L. Lammie ("federal defendants") were represented by James L. Browning, Jr., United States Attorney by Richard J. Dauber, Special Assistant to the United States Attorney. The defendants Norman B. Livermore, Jr., and John R. Teerink ("state defendants") were represented by Evelle J. Younger, Attorney General for the State of California by Bertram G. Buzzini, Deputy Attorney General. The intervenor

Kern County Water Agency was represented by Clifford W. Schulz, Esq. The intervenor Metropolitan Water District of Southern California was represented by Robert P. Will, General Counsel and Victor E. Gleason, Deputy General Counsel. The intervenor Santa Clara Valley Water District was represented by Albert Thomas Henley, Esq., and Daniel F. Gallery, Esq. The intervenor Tulare Lake Basin Water Storage District was represented by James G. McCain, Esq.

The Court having heard and considered all of the evidence and arguments thereon, and having issued a Memorandum of Opinion on July 28, 1975, hereby adopts said Memorandum of Opinion as its Findings of Fact and Conclusions of Law, as required by Rule 52(a), Federal Rules of Civil Procedure.

THEREFORE, based upon the Findings of Fact and Conclusions of Law adopted and incorporated by reference herein, it is hereby ORDERED as follows:

1. That state defendants shall obtain authorization to operate the Delta Pumping Plant, in the manner prescribed by section 10, Rivers & Harbors Act of 1899, 33 U.S. Code section 403, at the earliest possible time, but not later than March 31, 1979.

2. That the Secretary of the Interior and the Commissioner of Reclamation shall obtain authorization to operate the Tracy Pumping Plant, in the manner prescribed by section 10, Rivers & Harbors Act of 1899, 33 U.S. Code section 403, at the earliest possible time, but not later than March 31, 1979.

3. That the Secretary of the Army or his delegate shall prepare and file with the Council on Environmental Quality a Final Environmental Impact Statement, pursuant to 42 U.S. Code section 4332, with respect to the issuance of any permits under section 10, Rivers & Harbors Act of 1899, 33 U.S. Code section 403, authorizing the operation of the Delta Pumping Plant or the Tracy Pumping Plant, prior to the issuance of any such permits but not later than December 31, 1978.

4. That with respect to the Peripheral Canal, as presently proposed, no construction work shall be commenced by defendants prior to their obtaining authorization in the manner prescribed by sections 9 and 10, Rivers & Harbors Act of 1899, 33 U.S. Code sections 401, 403.

5. That no authorization under sections 9 and 10, Rivers & Harbors Act of 1899, 33 U.S. Code sections 401, 403 shall be granted respecting the construction and operation of the Peripheral Canal, as presently proposed, without the prior preparation and filing with the Council on Environmental Quality of a Final Environmental Impact Statement pursuant to 42 U.S. Code section 4332 by the Secretary of the Army or his delegate, or by the Secretary of the Interior or his delegate.

6. That no construction work on or relating to the Peripheral Canal, as presently proposed, shall be commenced by state defendants prior to the preparation and filing of a Final Environmental Impact Report pursuant to section 21100, California Public Resources Code.

7. That plaintiffs' second, third and fifth claims are dismissed with prejudice.

8. That pending defendants' compliance with this Interlocutory Order Granting Injunctive Relief, the Court retains jurisdiction over the subject matter and parties to entertain proceedings in Phase Two of the bifurcated trial, and to make such further orders as the Court may deem necessary and just.

DATED: December 18, 1975

CHARLES B. RENFREW

Charles B. Renfrew
United States District Judge